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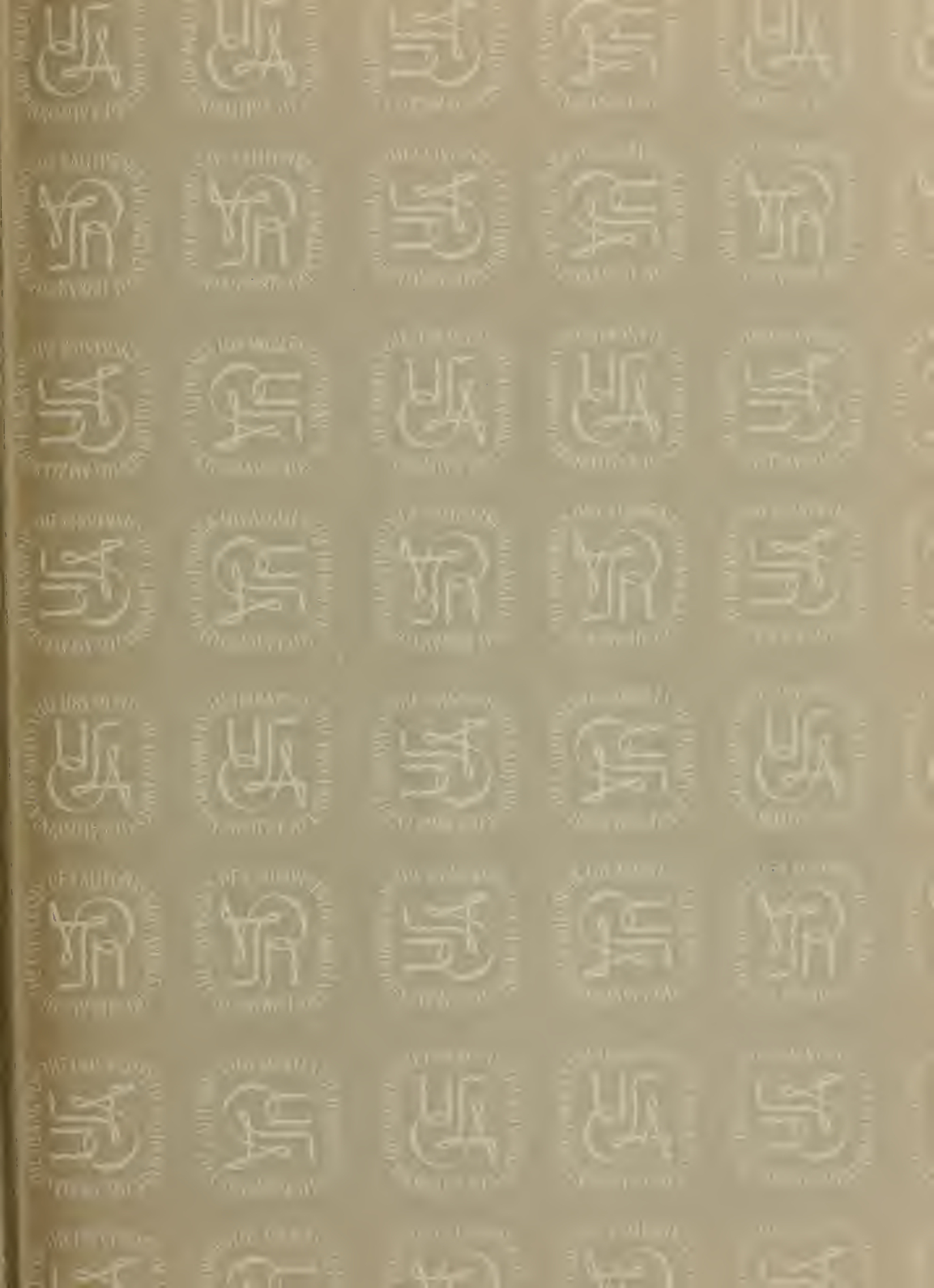

In the Superior Court

OF THE

COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA.

DEPARTMENT ONE

Cucamonga Vineyard Co. et al.,

Plaintiff

vs.

San Antonio Water Co.,

Defendant.

No. 9187.

Vol. I.

HON. FRANK F. OSTER, Judge.

I. BENJAMIN, Official Reporter.

COUNSEL APPEARING:

For Plaintiff.

Hunsaker & Britt,
O'Melveny, Stevens & Milliken,
Byron Waters,

For Defendant.

Jno. S. Chapman, Esq.,

Gregg & Surr.

For Intervenors,

C. C. Haskell, Esq.

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OFFICIAL REPORTER
SUPERIOR COURT.

my 6-16-59

DEFENDANT.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Company, et al.,

Plaintiff

vs.

San Antonio Water Company,

Defendant

VOLUME I.

I N D E X

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I. BENJAMIN, Official Reporter

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF SAN BE NARDINO.

DEPARTMENT ONE.

Cucamonga Vineyard Company, Cucamonga Land and Irrigation Company, and the Old Settlers Water Company, Plaintiffs, vs. San Antonio Water Company, Defendant.	No. 9187

J. BENJAMIN
OFFICIAL REPORTER,
SUPERIOR COURT.

May 14, 1907, First Day.

Appearances:

For Plaintiffs, Hunsaker & Britt, R. F. Stevens, Byron Waters.

For Intervenors:- C. C. Haskell.

For Defendant, Gregg & Surr, J. S. Chapman and E. H. Jolliffe.

--o--

The Court ordered the official reporter to take down the testimony and proceedings.

Counsel proceed with the reading of the pleadings.

Th Court takes a recess until two o'clock.

--o--

Afternoon session.

The reading of the pleadings is completed.

By stipulation of parties it is ordered th t the reporter's fees be divided as follows: plaintiffs and intervenors to pay one-half and defendant to pay one-half.

By agreement of parties it is ordered that the reporter prepare five copies of the transcript of the evidence, one thereof to be for the use of the Court, two for plaintiffs and intervenors, and two for the defendant. All said fees to be taxed as costs.

--o--

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F. E. TRASK.

F. E. TRASK, a witness poduced by plaintiffs being first duly sworn testified as follows:-

DIRECT EXAMINATION.

BY MR. BRITT.

Q. Mr. Trask, were do you reside at present?

A. Los Angeles.

Q. You are by profession a civil and hydraulic engineer?

A. Yes, sir.

Q. You have been engaged in the practice of your profession how long?

A. In this State since '87; 20 years; and I have had some experience in New England before I came here?

Q. You are acquainted with the locality called the Cucamonga Springs in this county?

A. I think so.

Q. You know the situation of what is called the Cucamonga Vineyard and the building known as the Cucamonga Winery?

A. I know where the winery and the vineyard are located. That is, I have been there.

Q. Do you know the situation of the little creek that comes down from a northwesterly direction and flows close by the Cucamonga Winery?

A. I have seen flood waters flowing down near the winery.

Q. You made measurements of that creek or the water flowing there a number of years ago, did you not?

A. I have made some measurements at different times in the last twenty years in that creek.

Q. In August, '96, did you make a measurement of the quantity of water which was then flowing in what was known as the Creek Division Box at the head of the thirty inch pipe line, a little way above the winery, in a northwesterly direction?

A. I couldn't answer as to that date from memory. Of course I have made notes of those measurements and I could give exact dates.

Q. Have you those notes with you?

A. Not in the court room. You sprung a surprise on me. I didn't expect to meet you here.

Q. I didn't have the pleasure of meeting you immediately, or I should have given you notice. You have those notes here in town?

A. I think I have everything covering that. I won't be pos-

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itive, but I believe so.

Q. At your early convenience I will ask you to look at your memorandum of measurements made in that locality in August, 1896; also, in August, 1897, in August, 1898. During those years did you make measurements at places other than the division box a little above the winery? Did you make measurements at a tunnel known as the "Y" tunnel a little way north of the winery?

A. Yes, sir.

Q. And you have notes of the results of those measurements, have you?

A. Yes, sir. I presume in all your questioning you are referring to the certificates that I have issued covering measurements.

Q. I am referring to the actual measurements and the notes which you made.

A. You are referring to a series which I made which cover both those points?

THE COURT. I understand the witness to be uncertain as to the time.

A. That is the point I want to make. I presume you have the dates correct, but I cannot say that you have or have not.

Q. At whose instance did you make those measurements?

A. Mr. Summers, who was in charge of the winery.

Q. That was Mr. Summers who was the superintendent or manager of the winery or vineyard?

A. He represented the owners and employed me on the work and I reported to him personally.

Q. Is that gentleman in court here now?

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A. I recognize him, yes, sir; he is the party.

Q. Mr. Trask, have you any professional employment in the lowering of a certain well a little distance to the north of the locality that I am speaking of, known as the Haskell well of the San Antonio Water Company, about the year 1899 or 1900?

A. I believe I have nothing to do with that. I don't recollect that I had anything to do with the sinking of that well.

Q. You are acquainted with the well known as the Haskell well?

A. I know its locus; yes, sir.

Q. You know its locality?

A. Yes, sir.

Q. Do you know approximately the line of section four where this "Y" tunnel and the little creek that I speak of-- do you know approximately where the north line of that section is?

A. Yes, sir.

Q. Is it conterminus with the San Bernardino Base Line?

A. It is.

Q. This Haskell well is situated in what direction from Base Line?

A. North of it.

Q. Are you acquainted with the string of wells or the locality of the string of wells which extends westward from the Haskell well for a distance of some four thousand feet or such a matter?

A. I am, more or less.

Q. You know what is called the Rubio well?

A. I do.

Q. That is the next one of this series of wells, next to the Haskell well.

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A. Yes, sir.

Q. Do you know exactly the distance of the Rubio well from the Haskell well?

A. Not from memory.

Q. Have you any record or memoranda in your possession which would show the exac' distance?

A. Not at present.

Q. You have such data here in the city?

A. I think I have.

Q. I will ask you at the next convening of court, if it is convenient for you, to produce those. Now, of the wells that I have mentioned, the series extends thence cfrom the Rubio well in a general westerly direction, doesn't it?

A. Yes, sir.

Q. How many of them are there in that ~~xkxxxxx~~ string?

A. Two of the Haskell wells, so called; the Rubio well; and five known as the Sixteenth Street wells; all being practically in an east and west line and approximately arallel with the Base Line.

Q. And what distance from Base Line?

A. I haven't measurements in my mind.

Q. You can guess that with accuracy?

A. I have it platted on the maps, but it is so long since I made the measurements th t I could only give them approxi9 mately.

Q. Those Sixteenth street wells are designated how? By numbers?

A. Yes, sir.

Q. Where do they begin to number?

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A. They begin at the west and number from one to eight.

Q. They number toward the Rubio well?

A. From one to eight, beginning at the west, including the Haskell well.

Q. Give the numbers?

A. The five wells which we call the Sixteenth Street wells the numbering begins at the west and runs consecutively, and the Rubio well would be number six, and the original Haskell well number seven, and the second Haskell well number eight.

Q. The second Haskell well is just a few feet distant from the first Haskell well?

A. It is something like a couple of hundred feet. I can't give it accurately.

THE COURT. Q. Do those numbers indicate anything as to the relative ages of the wells?

A. No they do not; simply a matter of convenience.

MR. BRITT. Q. Are these drilled wells, bored wells or dug wells, or what is the nature of them? How were they sunk?

A. The original work at wells two, three, six, seven and eight, were shafts. I think, for that matter, all of them were for some distance. But at present the wells are bored wells. Some water was pumped from 2 and 3 and 6 and 7 before the bored wells were put down. They were pumped from shafts.

Q. What is the depth of those wells respectively?

A. They vary from some two or three hundred feet up to about 700, but I cannot give you that from memory.

Q. You have data at your command which would give the depths?

A. I have data in my possession, yes; I have never measured the depth of any of them. The data that I have has come to me

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second hand. That is, it would be second hand to you.

Q. The wells were sunk first as shafts for a distance of 50 or 60 feet and then below that depth of 50 or 60 feet, drilled?

A. I won't say that of all of them. Some of them were put down at a time when I knew nothing of what was going on.

Q. What is the diameter of the bored part of the wells?

A. I would have to go to my notes. I think 12 and 14 inches, and may be a 16 inch well. I would have to go to my notes for those details.

Q. They are all cased?

A. The bored wells are.

Q. Which of them are not bored wells?

A. The tops of all of them are lined up as shafts.

Q. With what? Boards?

A. Yes, sir.

Q. What is the size of the shaft part of each well?

A. I think they vary, but they must be about from 6 to 8 , and some even larger.

Q. Six to eight feet square?

A. Yes, sir; and I think some of them must be 8 by 10. I never measured them. I know some of them were quite good sized.

Q. Were any of those wells sunk under your direction?

A. The original work at well number 3, the old Sixteenth street well, was done under my direction, and was originally sunk as a shaft to the water plane.

Q. What year was that?

A. I think that was 1890 that the original work was done, but I would say that with a reservation.

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Q. Was that well number 1?

A. No, that was well number 3. It was the original Sixteenth street well; the well which I think I put down in 1890.

Q. Can you give the dates when the others were sunk? I am speaking now of the digging, the shaft part of the well?

A. I wouldn't care to do that from memory because it would be much easier to get it from me or others from actual records; I might have to correct some statements; I want to say that a great many of these things I do not attempt to carry in my head at all and put them in my books; I have too many things to carry in my mind to bother with these things.

Q. You have all these matters in your memoranda?

A. I have all these things available undoubtedly.

Q. Do you know when the Haskell well begun to be pumped by the San Antonio Water Company?

A. Well, I think their books would be the best evidence of that, I couldn't say when they did begin pumping; I had nothing to do with that well-- at those times any way.

Q. Can you state without a reference to any memoranda at present, the time when each of those wells respectively began to be pumped first by the San Antonio Water Company?

A. I would prefer not to mention any time; it would be something of a guess; I am not clear as to the exact dates.

Q. You can easily tell those matters by reference to your notes?

A. I have my notes; part of the wells I have nothing to do with in any way, form or shape-- part of them; part of them my notes will show when the work was begun.

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Q. Have you ever measured the output of water from those wells?

A. At times I have taken measurements there.

Q. In what years?

A. Well I think I did some measuring ther in 1899, 1900, 1904 and 1905.

Q. Can you tell from memory what the results were?

A. No, I wouldn't care to.

Q. Of course your records were kept of that?

A. I prefer t. trust to my records, yesxxx sir.

Q. You have those where you can produce them?

A. I have them.

Q. You have them in the city?

A. Yes, sir.

Q. I will ask you if convenient at the next session of court to bring those, Mr. Trask.

MR. BRITT. That is all for the present.

--o--

JAMES BURCH.

JAMES BURCH, a witness called by plaintiff being first duly sworn testified as follows:

MR. WATERS. Q. Please state your name?

A. James Burch.

Q. Where do you live?

A. I live at Ontario.

Q. How long have you lived in that section of the country?

A. Very near 20 years.

Q. Do you remember what year it was you came there?

A. I came to Etiwanda in 1883 but I staid there 3 years and

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then afterwards I went to Pomona and staid nine months and the balance of the time I have been living in Ontario.

Q. Have you ever been familiar with that section of the country called Cucamonga? Have you been about Cucamonga much?

A. Yes, sir.

Q. When were you first in Cucamonga?

A. I have never lived there.

Q. When were you first there?

A. I have been there 23 years ago.

Q. When did you first see if you ever saw the stream of water called the Cucamonga Springs stream?

A. I never seen it yet; never but one where they take water out, to take water out to go to the South Cucamonga depot, the Southern Pacific depot; that is the only spring I ever noticed there.

Q. When were you there, when did you see that?

A. I can't say positively what time but I was working for Mr. Summers at the time and I went up there with him; now I think it must be, probably 6-- no-- 5 years ago.

Q. Where did you go with him, where was it you went with him?

A. It is right up the creek on the west side of the creek in the hill there a little bit; you know what is called the Red Hill; it is a little over a quarter of a mile from that big bridge that crosses below.

Q. Immediately up the wash did you go from that big bridge?

A. No, we went up by the old Park hotel and crossed the wash up wh re the spring is.

Q. Did you o he do any measuring of water there at that time?

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A. Yes, sir, there was water there then.

Q. Did you and he measure it?

A. Well, I can't positively say whether he took any measurement or not, I know I didn't.

Q. Did you observe the stream that was there flowing?

A. Yes, sir; I seen that there was water there and it was running into a pipe and I think about the same time the South Cucamonga people, railroad people, were putting in a larger pipe , and they came up to the lower end of the vineyard and he stopped them there, so he told me; didn't let them come any further.

Q. What did you observe with respect to a stream of water being there at this point where you and Mr. Summers went?

A. Well, there must have been-- oh, there was between 2 and 3 inches probably of water.

Q. Where was that?

A. At that spring, running into a pipe and going down-- the whole of it that was there as near as I can remember was going into a pipe that carried to the South Cucamonga depot.

Q. Did you go up the grade of the country there in the water way?

A. No, sir; we did not go up any further than that spring then; I have crossed that canyon above in several places but I understood there was springs, but I never seen them.

Q. Then you have nothing to say about the other springs or stream of water?

A. I have seen water in that wash several times but I never happened to observe those springs that you speak of and that the others have spoken of.

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Q. Did ou have anything to do with the sinking of any well or shaft about Cucamonga or north of the vineyard or north of the winery?

A. Well, north of Sixteenth Street I did.

Q. That is north of Base Line is it?

A. That is what was called the Haskell wells.

Q. What did you have to do with the sinking of the Haskell well?

A. Well, a I was put in there as foreman over the sinking of those wells.

Q. By whom was you put in as foreman?

A. By George Chaffey; he was manager for the Ontario Water Company at the time; that is the San Antonio WaerrCompany I should say.

Q. And George Chaffey the manager put you in as foreman?

A. Yes, sir.

Q. Had there been any such thing as the Haskell well before you went there?

A. Yes, sir.

Q. You did not go there to make the original sinking of the shaft from the collar, but you went to deepen it, is that it?

A. No, I didn't go to deepen that one first; I sunk others first; I sunk 3 others and Mr. Haskell sold this well to the San Antonio Water Company and he contracted to enlarge the shaft down as deep as his well went and Mr. Chaffey told me to look after it and see that it was done properly, and I done so; and he sunk the shaft down as deep as the well went; and then he ordered me to go on and sink it deeper and we put in a pump; he fetched a pump there or sent a pump there, called a

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Crow pump, a compound centrifugal; and I made a frame for it and put it in the well and if I remember right at the time we had it running you were there and some others and seen the pump running.

Q. You say you went there under Chaffey?

A. I couldn't state exactly the time but as near as I can think-- I have an old book-- if I had time I might have hunted that book up with the time in it and the year would be on it; but I haven't got it; and I wasn't at home when I was subpoenaed to come here; I was still at work at a well north of the Haskell well, about a mile north of the Haskell well.

Q. Irrespective of the year --

A. As near as I can remember it is about 6 years ago.

Q. That would make it 1901.

A. Yes, sir.

Q. When you went there Mr. Haskell begun enlarging the shaft?

A. No, sir.

Q. Then you saw the Haskell well as Haskell first made it?

A. Yes, sir.

Q. What was the size of the shaft?

A. The size of the shaft, I think was about 4 by 6 in the first place.

Q. How deep.

A. About 60 feet; I didn't measure it, but that is what they called it, 60 feet.

Q. Was there anything in it in the way of a pump when you went there?

A. What we called a Crow pump; I think it is in the Water

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Company's shed yet, the pump.

Q. I am talking to you now about the time when Mr. Haskell was there before you went there as foreman.

A. He had what he called a Green pump.

Q. The Green pump was a brass valve--

A. A regular suction pump.

Q. The Green pump was a piston pump, a circulating pump, wasn't it?

A. No; the centrifugal pump is one that revolves.

Q. I am asking you about the Green pump. I will have to get over a little closer.

A. I am a little hard of hearing, Mr. Waters.

Q. Now the pump that Mr. Haskell had there was what kind of a pump?

A. What they call a Green pump I think, I am not positive of that, but it looked to me like a Green pump, what they call a Green pump.

Q. The Green pump is one that had one cylinder and one piston?

A. Yes, sir.

Q. And the circulation went around with different metal valves in it?

A. There is two metal valves, one at the top and one at the bottom.

Q. But it circulated around in two pipes?

A. No, sir; not that I know of, a single pipe.

Q. That pump was what capacity?

A. Well, I think that the pump would pump about 15 inches, lifting that distance.

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Q. What was the lift that was on it?
A. Well, it was lifting about 60 feet.
Q. Or forcing it rather?
A. Yes, sir.
Q. The pump was down below in the shaft?
A. Yes, sir.
Q. You took that pump out?
A. No, Mr. Haskell took it out I presume, I didn't see it taken out.
Q. You begun then or Haskell begun and enlarged that shaft?
A. Yes, sir.
Q. How long was he engaged in enlarging it?
A. Well, he must have been a month and a half anyway.
Q. He begun about when, about what time of the year?
A. Well, I don't know justnexactly, I couldn't say exactly just what time of the year it was.
Q. Let us take the whole operation and see how long a time it took: he was how long enlarging the shaft?
A. About a month and a half as near as I can possibly tell now.
Q. And he enlarged it down to the depth of how many feet, 60?
A. 60.
Q. Then did you leave it there or did you continue it down?
A. No, I went on to sink the shaft on down deeper.
Q. How deep?
A. I went down to the depth of 95 feet.
Q. Taken together of what he had gone and you, you went 95 feet?
A. What he had done and what I had done, together, was 95

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feet.

Q. Then what did you do?

A. When I went down there I will tell you just what I did--when I went down to a depth of about 80 feet I got down where there was no water coming out of the ground below; it was coming out from above and falling down and I told Mr. Chaffey that I didn't think it was any use to sink any further, that I had got into a sort of a cement gravel that there was no water in; he said all right we will stop sinking; and we stopped sinking, but still they pumped on for two or three days; he didn't order me to stop pumping and I kept on; but I only run in the da time; I had a man to run the engine at night and another one in the day time; Mr. O'Neil ran it at night and Mr. Dallas ran it in the day time; and we stopped running at night and run in the day time, I think for a week or such a matter.

Q. Then what did you do?

A. Well, we hadn't the other wells done yet and we kept working on them and we got them all down to water and we got water in all three wells at the depth of about 60 feet; well, them wells stood there for some time and also the Haskell well; there was nothing done, only waiting for the well driller and Mr. Holstern finally came and drilled the well down; now he told me that he put the well down 660 feet.

Q. Did you remain there after this man came?

A. Well, I wasn't there all the time then; I was working at these other shafts up to the time that he came there but after he drilled the wel I wasn't there; and after he got through he said he went down 660 feet; he started with a 15 or 16

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inch pipe and I wouldn't be positive which but he went down as near as I can remember, he told me that he went down 500 feet with that 15 or 16 inch pipe whichever it was and then he had to reduce; he struck s mething that he couldn't get through and he had to reduce.

Q. This is all that he told you or some of it?

A. Yes, sir.

Q. When you got down 95 feet did you put some kind of a pump in there?

A. We had the pump in before that; we had to put the pump in as soon as we started to pump it out.

Q. Where did you put the pump in?

A. We put the pump in and lowered it as we went down.

Q. That was a compound centrifugal?

A. Yes, sir.

Q. And what capacity did it have.

A. It was a 40 inch pump, a small pump.

Q. And you kept lowering that pump?

A. We lowered that pump every day.

Q. And you lowered it so that its suction would extend to the bottom of 95 feet?

A. Yes, sir; the suction was very little, just so a man would stand in there and work. The mouth of the suction was as large as the rim of my hat with little bars all across it each way to keep the rocks from sucking in and the men would dig a hole as deep as they could get it under the suction and then we would lower the pump and then they would work until the water would come up over their gum boots, as high as they could work in the water and they would keep the water up to their knees all the time because if they didn't the pump would suck air and they would ring for the enginee to speed

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up or slow down as they were working.

Q. How far down in this shaft of 95 feet in de th did you find water flowing in?

A. About 80 feet as near as I can remember; it might be a foot either way, but as near as I can remember it was 80 feet.

Q. Did you encounter there any change of formation?

A. I did; I found no original formation to get through.

Q. Did you find any change other than what you found before?

A. Yes, sir.

Q. What did you come to?

A. We came to cement gravel; it wasn't cemented very hard so we could pick it, but it was cement.

Q. Above that what was it?

A. It was very large boulders.

Q. Didn't it have anything else in it besides large boulders?

A. There was small gravel of course amongst those boulders.

Q. And that had water in it?

A. Yes, sir.

Q. How deep did you go with this shaft in this cemented gravel in the Haskell well?

A. In the Haskell well we struck the cement gravel as near as I can remember about 16 feet before we stopped, about 16 feet of that cement.

Q. And did you notice that any water would come through that cemented gravel?

A. No, sir.

Q. None seeped in at all?

A. No, sir; we used to put sheds over it to test it, put sheds in above to shed the water off

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and we could pick in there and it was perfectly dry.
Q. Do you mean it was dry in the sense of absense of moisture--
A. There was moisture of course.
Q. There was no dripping water?
A. No dripping water, no seepage water.
Q. No seepage water?
A. No, sir.
Q. That was all the work you ever did on the Haskell well?
A. That was all I ever had anything to do with on the Haskell well; I helped put up the boiler and engine and boiler house.
Q. What was done with the water that you pumped out of the Haskell well?
A. Well there was a good deal of it pumped into an old reservoir and it was running out about as fast as we pumped it in; Mr. Rubio come and asked us then if he could have the water and I told him I presumed he could and he got a lot of pipe and laid it there and we pumped it where he could catch it and he run it onto his orchard and irrigated with it there for quite a little while.
Q. How long did you pump there in the Haskell well?
A. I should judge we were pumping it there for over two months.
Q. Do you remember what months they were whether summer months or winter months.
A. Well they were summer months because he wouldn't have been running the water on to his orchard in the winter.
Q Did you dig any other shafts thereabouts that same summer?

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A. I dug three shafts besides that.

Q. Where were they?

A. They were right on a line due east, a out 30 feet north and then due east; they went a distance about as far as from here to -- well, not as far as the postoffice from here; the first one that we sunk was pretty close to the original Haskell well.

Q. North and east of it?

A. Yes, sir; north the width of the street about, north.

Q. And east of it about how many feet, give it in feet if you can?

A. Well, I think it would be not much over 300 feet.

Q. When did you begin to dig that?

A. Well, we started in digging that when Mr. Haskell was enlarging the other well.

Q. How deep down did you go in that shaft?

A. That shaft we put it down 60 feet exactly because I measured it when we struck water.

Q. Do you mean to say that you struck water just at 60 feet?

A. Yes, sir.

Q. Quit right there?

A. Yes, sir, we quit right there. We didn't calculate to dig any further than to strike water from the fact they would bore it after that.

Q. How long did you work on that shaft?

A. Well, you can figure it up: we used to go down on an average of about 4 feet and a half a day.

Q. Take the next one?

A. The next one is I suppose 500 feet east of that one.

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Q. How deep did you go with that?

A. We went down 62 feet in that to strike water.

Q. And stopped?

A. And stopped.

Q. Take the next one?

A. The next one we were working on at the same time, but that was on a little bit higher ground and we were still 2 feet deeper with that one.

Q. Then you got that at 64 then?

A. Yes, sir.

Q. What was the size of the shaft, about the same size?

A. 5 by 7.

Q. Each of the three?

A. Yes, sir. Well, now I will tell you Mr. Waters it is not exactly 5 by 7 inside it is 5 by 7 outside of the plank.

Q. Outside of the timbers?

A. Yes, sir, that is the way the timbers cut; 12 feet timber and they are notched together this way and the one fits against the bracket here, and the thickness of the two inches is here for the next one to set on.

Q? Did you have anything further to do with the sinking of the shafts there?

A. Not for that Company.

Q. Did you for any company?

A. Yes, sir; further north.

Q. How long afterwards?

A. Well, that was just about 6 or 7 months after I quit there when I went to work for Mr. Saurwine what they call the Upland well on Nineteenth street. This is just above Sixteenth

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and that other is on Nineteenth.

Q. Did you dig a pit up there?

A. Yes, sir.

Q. How deep did you go?

A. I went 180 feet.

Q. 180 feet?

A. Yes, sir.

Q. Did you make a note of the difference in elevation in the two places?

A. It was altogether different formation; this is a cement gravel all the way, a great many boulders in it but the boulders is decomposed and all the rocks that is in it is decomposed and when they come out to the air they slack; as soon as we get to the water then the ground seems perfectly loose. This well I didn't put it down that depth at the first start, for the water sunk, and then we put it down deeper, and it sunk again and we put it down deeper again; and we put it down the third time; the last time we sunk we went down 14 feet.

Q. How much water did you get the first time you struck water.

A. The first time we pumped it with a Worthington steam pump and we pumped 81 inches.

Q. How deep did you say it was to the water in that well.

A. Well, now I will tell you; about two months and a half ago we were down and measured it and it had raised in the well about two feet I think and it is now up very near 6 feet higher than when we started; I have been at work in that well nearly three months.

Q. You are at work in that same well now?

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A. Yes, sir.

Q. You dug the Saurwine well in the same year you dug on the Haskell well?

A. Yes, sir.

Q. And all in the year?

A. I couldn't say for certain; it was the same year; it might have been in the winter that I started and it would throw me into the next year.

Q. Now in the Saurwine well you found water at what depth?

A. At first we found water at a depth of 130 feet.

Q. What depth of water did you find at 130 feet?

A. We didn't go any deeper with the shaft then; they got well drillers--Mr. Beck drilled a well 440 feet.

Q. Do you know anything about drilling the well down yourself?

A. Well I was there when they put it down.

Q. Were you there when they put the pump on it?

A. Yes, sir I was there when they put the pump on; I wasn't there all there time because it stood quite a while before they put the pump in.

Q. After he put that drilled well in that how high did it raise in the shaft?

A. We sunk the shaft immediately; it didn't come up in the shaft; after we found the water it was some time before the well was drilled and then the water had gone down and they drilled the well and then after they drilled it we dug down and got to the water and we had gone down some 18 feet on their pipe-- you see they took the pipe off at the bottom of the well--

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Q. While you were at work about the Haskell well did you observe or notice the fact as to whether the pumping of the Haskell well in any way affected any other wells in the neighborhood?

A. Yes, sir.

Q. Just state to the Court what you did notice in that respect.

A. When they pumped the Haskell well steady-- there was a well put down by some Chinamen or they had it put down and it used to affect them so that they didn't get water as much as they wanted; they used to still get wat r but they didn't get as much as they wanted; and then when the Haskell well would stop pumping they told me themselves-- now this is only hearsay -- they told me the water come way up.

Q. Where were the wells of the Chinamen.

A. It was due south.

MR. CHAPMAN. I move to strike out the answer as to what they told him.

THE COURT. What the Chinamen said?

MR. WATERS. That may go out, what the Chinamen say.

THE COURT. Stricken out.

Q. Where was the Chinaman well?

A. It was due south on what is called the Cucamonga property.

Q. It was due south of the Haskell well and how fa distant.

A. Well, it is about an eighth of a mile or such a matt r south of the Sixteenth street well?

Q. That would be about how far from the Haskell well?

A. That would be about a quarter of a mile from the Haskell well.

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Q. That well was on a piece of ground occupied by somebody?
A. A Chinaman had it rented from Mr. Hellman so Mr. Summers told me.
Q. Mr. Summers will know what place that is will he?
A. Yes, sir.
Q. Did the Chinese have a farm or garden there or something?
A. Yes, sir; they had quite a vegetable garden around there.
Q. Did you notice any other affect of the pumping of the Haskell well at that time?
A. No, sir; not any that I know of.
Q. To what depth was the Haskell well being pumped at this time that you refer to?
A. W started pumping at the depth of 60 feet and we kept lowering our pump till we went down to 95 feet. W had our pump frame made in such a way that all we had to do was to slack some wedges and lower it down and fasten it again and go on pumping.
Q. And it was during this pumping that your attention was called to the fact of the affect on the other wells?
A. Yes, sir.
Q. Was there uniformity in the quantity of the water that would flow into the Haskell well, that you lifted out of it?
A. Well, I couldn't say whether it was uniform or not; the well would fill up if we would stop a little while and then we would pump,a pretty good stream, probably 20 inches we would get but it wouldn't last long and we would get down to where we were not pumping over 3 inches and we used to have to slow the pump down very slow or else it would suck on them; sometimes it would commence to fill up on the men below and

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they would ring for them to speed up a little.

Q. The thing I am trying to get at is this: did you form any idea or estimate as to the amount of water that was seeping into the well?

A. The better way would be to figure that, would be to take what you pump out when you start and what it would come to. I don't think the well was flowing 7 or 8 inches of water at the outside.

Q. Then when you pumped a larger quantity than that you were pumping on the accumulation?

A. Yes, sir. You see the shaft would fill up. You take a big shaft of water and it will fill up; you can't keep it from it if you let it alone.

Q. BY THE COURT. You spoke of starting with 20 and running down to about 3 inches: how long would it take to make that change?

A. We wouldn't pump only 25 minutes till we would have it-- from the time we stopped to lower it the well would fill up and by the time we got every thing done there would be a lot of water there and it wouldn't be over 20 minutes before the men could go back down to work.

Q. You said you saw the well first when it was down 60 feet.

A. Yes, sir.

Q. And then you saw it last when it was down 95 feet?

A. Yes, sir.

Q. Was there any considerable increase in the flow as you went down?

A. Well, I don't think we were getting-- maybe a little more water than there was at the 60 when we got to the 80; but we

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never increased any afterards; the engineer used to claim that he thought there was less water, but we couldn't tell; we didn't have any proper way of measuring it.

MR. WATERS Q. Did you work night and day shifts there, or only day shifts?

A. We did for quite a while, and the first stop we had of working at nights, I discharged one man for startrting the engine one Saturday night after we quit, and Mr. Shepherd, the secretary of the San Antonio Water Company, came there, and seen the engine stopped running, and he spoke to me about it. one of the men fetched up wine and made the engineer drunk, and he came there at midnight and started the engine up, and they came after me, and they had loosened the wrist pin and everything was gone to wreck, and I shut down the engine and stopped him from working; and we didn't work any at night after that.

Q. These other stoppages that you refer to would be stoppages to lower the pump, or what.

A. To lower the pump.

Q. How long would that take?

A. Well, I did lower the pump once, but I done that in a great hurry, and we got to running again in less than an hour, but it took us more than an hour, generally, to lower it.

MR. HASKELL: I would like to ask the witness a few questions.

THE COURT: Do you want to examine him as your witness or do you claim the right of cross-examining the plaintiffs' witnesses?

MR. HASKELL: We will not claim the right to cross examine the plaintiffs' witnesses at all. I just wish to ask of this

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witness a few additional questions.
MR. HASKELL, Q. I understood you to say that you had worked on three wells for the San Antonio Water Company, on the 16th Street line of wells, before you begun work -
A. I didn't say the 16th Street line.
Q. What wells did you refer to?
A. North of the 16th.
Q. They were how far away from the 16th Street lin ?
A. About one eighth of a mile.
Q. Now, you say you were lifting water sixty feet?
A. Yes, sir.
Q. In the Haskell well when you first started?
A. When I first started; yes, sir.
Q. Now, is that measurement from the surface of the ground to the top of the water or to the pump
A. That was to the bottom of the well. I didn't say positively 60 feet; I didn't measure that; I said to Mr. Waters I didn't measure it, but that was what they said it was.
Q. And that is what you think it was?
A. Yes, sir; and there is a man in the court room -
Q. How deep was the water in the well when you begun?
A. Well, there was about two feet or such a matter of water in the well.
Q. Now, you said somet ing about you found no original formation of ground in this well as you sunk it deeper: what do you mean by original formation?
A. Well, I would call bedrock original; we find that in mines; I have worked in mines a good deal.
Q. You have had some experience in tunneling?

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A. Yes, sir.
Q. You know what is original formation and what is filled earth?
A. Yes, sir.
Q. What was this? Filled earth?
A. It was filled in from water and other ways; I don't know how it got th re.
Q. All the way from the surface of the ground down to the bottoms of the well, as far as you went?
A. There was some soil on top; I don't know how that gets there, but I presume it comes from the mountains down over the valley; you go into any countyy,- you go alon; here,- and you go down quite a ways, quite a depth, and you don't strike a rock, and over there a little piece you will get into boulders.
Q. And that material all showed the wearing effects of water did it?
A. Yes, sir; that is my opinion.
Q. How far are the 19th street well, or the Saurwine well, how far north is that from the 16th street wells?
A. Well, it is 20 and 20 is 40; it is the length of 40 acres; ten acres laid out square would be 660 feet.
Q. It would be twice that distance?
A. It would be four times that distance; and it is 20 acres east of it.
Q. Do you mean 40 acres in a tier of ten acre lots?
A. In a square yes, sir.
Q. In a square form?
A. Well, you take them in a square form, every ten would make 660 feet square.

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Q. Well, you said 40 acres apart: Do you mean 40 acres square?

A. That is 40 acres apart.

Q. It would be twice 660 feet wouldn't it?

A. I didn't say that either; I said there was 20 and 20 would be 40, and 20 would be 60; it is the length of 60 acres apart.

Q. Then it is six times 660 feet?

A. Yes, sir.

Cross Examination.

MR. CHAPMAN, Q. How much water were you pumping from this shaft, when you say you would lower it down from the amount of about 20 inches, to three inches, in 20 or 30 minutes?

A. Well, I said before, when the shaft would be full of water, we would pump about 20 inches, but it wouldn't last long; we would get down till we wouldn't be pumping over three inches.

Q. In other words, you would pump out the water, when you were pumping 20 inches?

A. Yes, sir; a lot of it went into the old reservoir that was built by Mr. Haskell; it leaked; it leaked and it would run away.

Q. You were making no use of the water then? You were just pumping it out to get it out of the way?

A. To get it out of the way.

Q. When you ran down as low as three inches, did you continue to pump day and night?

A. We had to keep the men to work.

A. Well, did you?

A. Yes, sir.

Q. Did it continue to flow three inches?

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A. Well, it would continue as long as they pumped it; when they would stop to lower the pump it would increase in the shaft, and we would have to pump it out before the men could work.

Q. When it got down to three inches then you pumped -

A. We couldn't pump down to the bottom of the suction; if we did our pump would suck air, and it wouldn't pump any water.

Q. When it got down to three inches you didn't quit pumping?

A. We had to quit when it would get down deep enough in the well where the suction was; they couldn't work in the water only so deep; take a big flow, and put on a 20 inch suction, and she will suck air right straight through the water into that suction.

Q. When you were pumping as low as three inches from your pump, had you then so exhausted the water in the well that you would have to stop pumping?

A. No, sir; we didn't exhaust it while we were pumping it at that speed, but we would hold it just about that; we would pump faster to get it down so the men could work; as long as they could keep the suction down low enough so it wouldn't suck air, there was water enough over the suction so it wouldn't suck air, they wouldn't quit for the pump to be lowered

Q. When you were pumping three inches the water would come into the shaft practically fast enough to keep them going at that rate?

A. Just about.

Q. What made you think the yield would be any more than that?

A. Well, I think up at the top there was a great deal of water that sunk away through this formation that we didn't get,-

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but when it was pumped down lower,- when it would get up to a certain height, there would be more water there; that is my opinion; I may be wrong.

Q. Now, you say that this well or source of supply for this Chinese garden was avout a quarter of a mile south of this Haskell well, was it?

A. What was that?

Q. Where did the C ihaman get water for his garden? From what source?

A. It was about a quarter south of the well, south of the Haskell well.

Q. What was he obtaining water from?

A. They got water from other places; they got some water out of the canyon I think; I never went to examine their property much, but I have crossed down through it, and after they had left I was there and took their pump out, and took their engine out, and put up the engine for Mr. Summers, and I put the same pump in a well for Mr. Rudy, down on a dry ranch.

Q. At the time when you were engaged in this work, and when you were notified that it was having an effect upon the supply of the Chinese garden, did you know where the Chinamen were gettin water?

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A. Who said that I said that I was informed?

Q. Was it a fact?

A. I never told anybody that I was informed, and I never was. I heard the general talk of people about it and the Chinaman told me that when we pump the water go down and when we no pump the water come away up.

Q. Then you were informed of the fact at the time it was so claimed?

A. The Chinaman told me.

Q. At that time did you know where the Chinaman was getting water?

A. No, sir.

Q. You didn't know what it was that was affected by the pumping operations?

A. No, sir;-- I beg pardon. I did know that they had that well.

Q. What well was that?

A. It was a well they sunk. I don't know of any other name for it.

Q. Do you know any particular number for it?

A. No, sir; no number.

Q. Whereabouts was it?

A. It was due south of the Haskell well.

Q. On whose land?

A. As near as I can tell it was on the Cucamonga people's land. I don't know whether it was Mr. Hellman's or what it was.

Q. You didn't know whether the pumping operations that you carried on were affecting that well or some other source of supply the Chinaman had?

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A. No; I didn't know it.

Q. It didn't have any effect on the water that was flowing in the stream that you spoke of?

A. Sir?

Q. Your pumping operations didn't have any effect on the waters of the stream?

A. What stream?

Q. You spoke of some water flowing in the Cucamonga Canyon.

A. It did at some times, but not at the time I was working there, it didn't.

Q. This well that the Chinaman used: Did they pump water from the well that you spoke of?

A. Yes, sir; I have seen them pumping.

Q. Do you know how much water he was pumping?

A. When I saw it he was pumping about between 15 and 20 inches.

Q. From that well?

A. Yes, sir.

Q. And when he was pumping 15 or 20 inches do you know whether his own pumping operations had any effect on the water in the well?

A. No, I do not.

Q. And that, you say, was about half a mile distant?

A. No, sir; I didn't say so. I said a quarter.

Q. Oh , a quarter. Do you know whether there were any other wells in that vicinity being pumped at the same time?

A. No, sir; there was a little-- a little northeast there was wells being pumped.

Q. About how far distant?

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A. On Sixteenth street. There is one well just north of Sixteenth street; there was what they called the Lone Star well.

Q. How far was that from the well from which the Chinaman was getting water?

A. Pretty near a mile.

Q. And in what direction?

A. Southeast-- northeast.

Q. Were there any other wells in that vicinity?

A. Still further east there was wells.

Q. Were there any tunnels there taking water underground?

A. Yes; east of where the Chinaman was there was tunnels.

Q. You never made any investigations yourself to determine what it was that was affecting the Chinaman's source of supply?

A. No, sir.

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L. G. CUTTLER.

L. G. CUTTLER, a witness produced by plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

Mr. Waters: Q. Please state your name?

A. L. G. Cuttler.

Q. Where do you live?

A. Cucamonga.

Q. Your age?

A. 36 or 37.

Q. How long have you been familiar with that Cucamonga country?

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A I came there in '84.

Q. How old were you then?

A. About thirteen years old, or something like that.

Q. When did you first become familiar with the stream of water there called the Cucamonga Springs stream?

A. Soon after I moved there.

Q. How familiar did you become with it?

A. I used to live right there. I lived with Mr. Haskell for a long time right near it.

Q. Did you eve r observe the size of that stream of water?

A. Yes, sir.

Q. Did you evermake any measurements of it?

A. No, sir.

Q. What did you observe as to the size of the stream of water when you first knew it?

A. What do you mean?

Q. The quantity of water.

A. Oh, there was a nice little stream of water running there most of the time.

Q. What place do you refer to as flowing a nice stream of water?

A. In the creek, below where we lived.

Q. Do you know the place where the ditch or aqueduct is taken out of the bed of the stream and the water diverted into pipe lines and ditches and so on?

A. Yes, sir.

Q. Now, at the head of those aqueducts about how much wat r was flowing there? About how big a stream when you first knew it? Describe it.

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A. In different seasons there would be more than others. In the summer time I have seen it from 30 to 40 inches, and laterv I have seen it less.

Q. What do you mean by "later"? In later years?

A. No; later in the season when it would get hot; in the summer time it would be much less.

Q. And you haven't measured it?

A. No, sir.

Q. Have you ever observed the effect upon that stream or the coincidence of that stream going up or down as wells might be pumped or not pumped?

A. No, sir.

Q. Did you observe that section of country there before any of those wells, the Haskell wells and any of the wells in that neighborhood, were dug?

A. Yes, sir.

Q. Have you noticed since they were dug whether there was any difference manifested there with respect to flowing water?

A. Oh, yes; I have noticed that there w as less water.

Q. Just what have you noticed?

A. There is hardly any now.

Q. What have you noticed in that respect?

A. At present there is hardly any, and years ago there used to be considerable water there.

Q. Where?

A. In the creek.

Q. In the Cucamonga Springs creek?

A. Yes, sir; in the Cucamonga Springs creek.

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Q. Before this water development was made or had there did you evernotice whether there was flowing water on the west side of the red hill?

A. Yes, sir; a little.

Q. Can you state about what decrease there has been of water of the Cucamonga Springs creek on the east side of the red hill since this development has been made and these wells have been dug and pumped?

A. Not from actual measurement.

Q. I am talking about from ordinary observation.

A. It is very much less.

Q. About the head waters or to one side of the Cucamonga Springs when you first knew that country, was there any bog or swamp land there?

A. Yes, sir.

Q. About how much in area?

A. On which side do you speak of?

Q. I am speaking now of the east side.

A. Oh, possibly 50 or 60 acres or something like that, but that is guesswork.

Q. How big was that? How boggy was that?

A. It was very boggy. You couldn't go over it horseback, and hardly on foot.

Q. Did you ever try sticking a pole down in the bog?

A. No, sir; I never did.

Q. Did you ever notice whether it was boggy only for half a foot or whether the bog had depth to it?

A. No, sir; I only noticed that I couldn't walk over it, or go over it horseback.

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Q. Did you notice whether there were streams of water flowing out of it and seeping away from it at the lower edge?

A. Yes, sir.

Q. Was there or not?

A. I noticed them; yes, sir.

Q. Where did the water running out of the swamps go to, or what did it run into?

A. It ran into the creek; it evidently went into the creek.

Q. Did you notice any coincident happening of anything else when that quit or ceased to be the case, that this bog existed?

A. Only of late years it is not boggy at all, and it is farmed-- some of it.

Q. Was it too boggy to be farmed before this?

A. Part of it was.

Q. Did that ground remain boggy during even the summer season when you knew it first?

A. Yes, sir.

Q. It remained boggy the year around?

A. Yes, sir; there was tules on some of it.

Q. On this creek proper, was there any timber growing when you knew it first?

A. Some alders and a few willows.

Q. Have you observed whether any of that timber has died?

A. No, I have not.

Cross Examination.

Mr. Chapman: Q. I understood you to say that the waters in this stream when you first knew it flowed a greater quantity in the early part of the season than it did in the later.

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A. Yes, sir.

Q. About what was the p riod of the lowest or smallest flow of water in the stream?

A. That I ever saw it, do you mean?

Q. When did the water reach its lowest stage?

A. I think in September.

Q. What was the extent of the fluctuation between the waters flowing in this stream in the spring and in September?

A. Possibly 50 or 60 inches, or something like that.

Q. How much water was there flowing there in the spring?

A. Some years there would be more than others. I have seen as high as 150 inches there; from 100 to 150 inches in the early spring.

Q. And in ordinary seasons about what was it?

A. In the spring time I should say about 100 inches.

Q. And then would it diminish during the seasonx till Septemberx it would flow as low as about 50 inches?

A. I think I have seen it as low as 50 inches in the summer time.

Q. Haven't you seen it less than 50 inches before any of this development?

A. No, I think not.

Q. You think it would fall off about half?

A. Possibly half.

Q. As soon as the development began you say there has been such a diminution of water that there was a year or so ago scarcely any?

A. Yes, sir.

Q. Have you observed that throughout the country generally

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during that same period that that was the fact with reference to all of these streams?

A. Somewhat.

Q. Now, with reference to this boggy tract, how many acres did you say that covered?

A Possibly 50 acres. It was so that you couldn't get around it ~~xx~~ all, but it is guesswork. I never measured it.

Q. That land was not fit for farming when you first knew it?

A. No; a great deal of it was not farmed at that time.

Q. A great deal of the 50 acres?

A. A great deal of this strip was not farmed

Q. Do you know whether anywork was done there by any person for the purpose of draining that bog and putting it in condition where it could be cultivated?

A. There was some work done on the bog.

Q. And what was the work that was done there?

A. There was some ditches put in.

Q. Weren't those ditches that were first constructed there made for the purpose of draining the waters from that bog?

A. Yes, sir; I think they were.

Q. And they did drain it?

A. To a certain extent.

Q. Didn't they drain it sufficiently so that it became cultivatable and was cultivated?

A. No, I think not. I think part of it was cultivated.

Q. How much of it?

A. I couldn't say.

Q. Do you remember when those ditches or trenches that were first made were made there?

I. BENJAMIN
OFFICIAL REPORTER,
SUPERIOR COURT.

A. I don't remember the exact date.

Q. Approximately?

A. I think about four years after I went there; I think somewhere in that neighborhood.

Q. That was what year that you went there?

A. About '87 or '88, these were made; somewhere in that neighborhood.

Q. Has there been any work done there since?

A. Not to my knowledge .

Q. Any in that vicinity?

A. You mean--

Q. Tunnels or trenches.

A. Oh, yes; there has been tunnels. But I had reference to the bog. There were tunnels run.

Q. Run under this boggy land?

A. No; it is commenced at the head of it, like; there was a cut put in.

Q. And then what?

A. Afterwards a tunnel.

Q. How far was that tunnel run into the land?

A. I don't know.

Q. You don't know the length of it?

A. No, sir.

Q. Approximately?

A. No, I don't know how long it was.

Q. Was that tunnel a continuation of these trenches?

A. Of one of them; yes.

Q. Who put it in?

A. I don't know who had that contract.

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SUPERIOR COURT.

Q. Do you know who directed it to be put in?

A. I think it was done by the water company. I am not positive.

Q. Do you refer to the Cucamonga Water Company?

A. The Cucamonga Water Company; but I am not positive.

Q. What was done with the waters that were obtained from that tunnel?

A. It was piped down toward the Cucamonga vineyard, and I think some of it wnt over to Cucamonga. I am not positive where it d d go.

Q: Is there still water in that tunnel?

A. I couldn't say.

Q. Do you know whether they are using that same pipe line and the waters of that tunnel to this day?

A. I do not.

Q. About when was this tunnel extension of this trench made?

A. I think in '87 or '88 or somewhere along there.

Q. When did this boggy land dry up, as it were?

A. It has been continually drying.

Q. When did it first become dry, from your observation? Dry enough to walk over it or ride over it?

A. The first time that I ever have been on it in recent years was three years ago.

The Court: Q. Is that the first time you were over it in recent years?

A. Yes, sir.

Mr. Chapman: Q. And had you paid any attention to it for some years before that?

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OFFICIAL REPORTER,
SUPERIOR COURT.

A. No; there was a period of years that I wasn't there.

Q. What ye rs were they?

A. Previous to three years ago I was away more or less of the time for six years , and I don't think at that time I was ever over it.

Q. Were you close enough to observe whether it was still wet or swampy or boggy

Was there anything being cultivated in it then?

A. I think not.

Q. Is there now?

A. Part of it.

Q. What?

A. Grain. Part of it was planted last year and part the year before.

Q. Do you know when it was first planted?

A. I do not; not the exact time.

Q. Do you know of any other work being done in that vicinity in the way of tunnels or wells?

A. Yes, sir; I worked on two wells for Mr. Haskell.

Q. And when was that?

A. That was, I think, in '86 or some time in that neighborhood. I lived with Mr. Haskell.

Q. Was that when the Haskell well was first dug?

A. I think one of them was there; the one near our house, and the one that is now in the street. We didn't know it was in the street at that time.

Q. Have any othe r wells been sunk in that vicinity to the east of this?

A. Yes, sir.

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How many?

A. I couldn't say.

Q. Do you know by whom?

A. I think by Mr. Stowell. I think he had the sinking of them-- the contract for them-- or something.

Q. I mean by whom were they owned? Whose property was it, or who caused them to be sunk there?

A. I think Mr. Stowell.

Q. Did he own the land?

A. I couldn't say.

Q. Were there any other wells in that vicinity besides those that were sunk by Stowell?

A. In the immediate vicinity?

Q. Yes, sir.

A. There was two north of those two, and there is five or six or possibly more west of the Haskell place in a line.

Q. Do you know where the Stowell wells were sunk?

A. I do not.

Q. Approximately?

A. No; I don't know.

Q. Do you know when any of those wells that you spoke of that were sunk to the east of the Haskell well were put down?

A. Of the Haskell property? No, I don't know the date.

Q. To the east of the Haskell well.

A. Oh, to the east? Stowell put them down several years ago.

Q. I mean any other than the Stowell wells.

A. The Sunset Water Company have a well to the north of east, and the Hermosa Water Company have a well a little north of that.

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Q. About how long ago were those wells put down?

A. Five or six or seven years, possibly.

Q. Were those wells bored or dug?

A. They were dug and then afterwards bored. I think that is the way most of the other wells are down there.

Q. Are you acquainted with the corporation known as the Old Settlers' Water Company?

A. I know some of them.

Q. Have they made any wells in that vicinity?

A. I can't say.

Q. Can you tell us at what time you first observed that this boggy land was becoming dry?

A. After a period of years that I was away and came back. Possibly three years ago or four.

Q. Up to the time that you left there you hadn't observed?

A. No; there was always a good stream there and I was away a period of years.

Q. And that period, I believe you said, was five or six years?

A. Yes, sir.

Q. And that eight or nine years that you saw that last before you left there they hadn't begun to dry up?

A. Somewhere in that neighborhood.

The Court: Q. Is this boggy place that you are speaking of the source of this stream that you were describing?

A. Yes, sir; there was apparently no water above

Mr. Chapman: Q. For three or four or five years before you left that section of the country had you been about this boggy land much or paid any attention to it?

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A. I don't quite catch that.

Q. For the three or four years before you left there-- some eight or nine years ago-- had you been paying much attention to this boggy land?

A. I used to live there. Mr. Haskell and I lived together.

Q. Did you live together all the time up to the time that you left?

A. In that neighborhood; yes, sir; near there.

Q. How far away?

A. I lived on the Haskell place. That is, just above it. And then Mr. Haskell and I lived-- we had two places. We had a brick yard and we used to cross back and forth. We used to cross up the stream to get where we lived.

Q. Did you have to cross that boggy land to make that trip?

A. No; we would come down the creek; we couldn't cross the boggy land.

The Court: Q. During these years that you were away were you back there at all on a visit?

A. Yes, sir.

Q. Did you visit in the same neighborhood?

A. A little above there.

Q. Did you go to this Haskell place at all during that visit?

A. Yes, sir; I went to theHaskell place nearly every time I was there, but the Haskell place was just above the cienega about a quarter to half a mile, and I wasn't on the springs then.

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J. P. CUTLER.

J. P. CUTLER, a witness produced by plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

Mr. Waters: Q. Please state your name.

A. Cutler is my name.

Q. Where do you live?

A. Ioamosa or Cucamonga. It is about the same.

Q. When did you come to that section of country about Cucamonga?

A. I went to Cucamonga first in '83-- in December '83.

Q. That is when you first came to that section of the country?

A. Yes, sir.

Q. What did you observe when you first lived there with respect to the stream of water which had its origin near about Cucamonga in some springs, if you observed it at all?

A. In what is called the cienoga-- there was a stream of water in the cienega or springs just above the vineyard.

Q. What was being done with that stream of water? Was it being used?

A. Part of it was used for irrigation at Cucamonga. What they could get was used for irrigating at Cucamonga.

Q. Where did this stream of water have its source?

A. It is about three quarters of a mile north of the winery.

Q. Describe the country there. What was there there to the west of the stream of water and its source?

A. Hills.

Q. A red hill?

A. What is called the red hill.

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Q. What was there to the north of the sources of the stream?

A. Farming land

Q. Dry land?

A. Yes, sir.

Q. And to the east what was there? Farming land again?

A. The balance of the red hill. This spring rises in between the two hills, and part of the red hill is on the east and part on the west.

Q. Was there any swampy ground there?

A. There was around the springs.

Q. About the head of that stream was there a swamp or cienega? or marshy ground?

A. Yes, sir.

Q. About what area?

A. I will have to approximate it. I couldn't tell you. I should say it was from 20 to 30 acres.

Q. Was it very swampy and springy?

A. Part of it was.

Q. Into what ditch or pipe line was this water carried?

A. It was carried into the Cucamonga pipe line, and some went to the vineyard or to the winery.

Q. Did you have anything to do with using that water yourself?

A. No, sir.

Q. You just observed it? Did you observe how the stream of water was made up? Of what tributaries it was made up?

A. There was different springs and they were coll cted together.

Q. The water would flow from each spring into the stream?

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A. Yes, sir; and the stream carried into the pipe line.

Q. Did you irrigate any with that water?

A. No, sir.

Q. Have you observed any change in that stream of water to have occurred coincident with anything else happening there?

A. The marshy ground was dried up and the willows are dead.

Q. There were willows growing there at one time?

A. Yes, sir.

Q. And they have died?

A. Yes, sir. Some are living yet, but most of them are dead

Q. Have you noticed whether this springy or marshy ground has changed its quality?

A. Most of it would do to farm now.

Q. It has dried out?

A. Yes, sir.

Q. Did you notice whether there were any tules growing there when you first knew it?

A. Plenty of them.

Q. Have you observed whether those tules are growing or not?

A. The tules are dead.

Q. Did you observe when this boggy ground dried out, as related to the happening of any other events there with respect, for instance, to water developments, pumping or digging wells?

A. I noticed after the wells were sunk the ground dried up.

Q. What wells do you refer to?

A. The Haskell well was right north of it, and there were wells west, and there was a well about three quarters of a mile or a mile east and a little north of the Haskell well.

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Probably not more than three quarters of a mile.

Q. Did you notice the size of this Cucamonga Springs stream after these wells were dug that you refer to?

A. No, sir.

Q. You haven't noticed it recently?

A. That was covered with weeds most of the time, and part of it with tules.

Q. Then you haven't been there directly so as to observe it?

A. You would have to go in; the road passes by and I only saw it as I passed by.

Q. Do you know anything about the pumping of any of these wells?

A. No; I don't know anything about it. I know that they do pump and get water and that is all I do know.

Cross Examination.

Mr. Chapman: Q. When was the Haskell well put down?

A. I can't tell you. I didn't pay attention to it. I didn't pay any attention to it. I know it was sunk and that they got water there.

Q. Can you tell about how many years ago that was sunk?

A. I can tell you it was since 1884. I could come a little nearer than that, but I don't know, and there is no use asking.

Q. When was the other well, three quarters of a mile east, put down?

A. Afterwards.

Q. How long afterwards?

A. I suppose one or two years. Probably two years. I am not sure. I wish you wouldn't ask me those questions. I can't

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answer them intelligently.

Q. Do you know of any work that was done in this bog or swamp or springy land for the purpose of draining it?

A. Yes, sir; the Cucamonga people got their water their and of course they dug ditches and ran tunnels to get the water.

Q. Do you know when that was done?

A. It was done a long time ago. I think it must have been done in the latter part of the '80's or '90.

Q. After the Haskell well was put down, was it?

A. After the Haskell well?

Q. Yes.

A. No. It was done long before the Haskell well. The Cucamonga Development Co. did their development long before the Haskell well was put down.

Q. When did you first notice that the swamp land began to dry up?

A Three or four years ago.

Q. Had any of it been cultivated more than three or four years ago?

A. No; you couldn't get on it with a horse in many places,

Q. Until the last three or four years? I understand you to say that until the last three or four years you couldn't get on to it with a horse?

A. That is what I mean.

Q. Those lands that once were tule, hasn't they been plowed up?

A. No, sir; they are down in those places where they could not very well be plowed.

Q. That was not the land a portion of which is now cultivated?

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SUPERIOR COURT.

A. No. They are cultivating a little further in all the time.

Q. The cultivation keeps extending into this swamp land ?

A. Yes, sir.

Q. Do you know how much of it is in cultivation now?

A. No, I do not. The Cucamonga people in draining that, of course, dug ditches, and of course it would be rough in places.

Q. They dug ditches?

A Yes, sir.

Q. And t ey did that for the purpose of draining it?

A. Yes, sir; they had to get all the water they could. They depended on that spring for water.

Q. How long did they continue to depend on that spring for water?

A. Till it dried up, I believe. I don't know whether they get water there or not. I don't know whether it all dried up or not.

Q. You don't know whether they still get water from there now?

A. No, sir; I do not. I am inclined to think they don't, but I can't say.

Q. Do you know any other well in that vicinity besides the Haskell well and the well threequarters of a mile east?

A. Do I know of any other wells?

Q. Yes.

A. Oh, yes; I know several wells, but I don't know anything about their capacity or anything about them.

Q. Do you know when they were put down?

Q. About where are these wells situated with reference to this swamp land?

L. BENJAMIN
OFFICIAL REPORTER,
SUPERIOR COURT.

A. Well, from hal f to a mile west.

Q. Any others east?

A. Excuse me?

Q. Are there any other wells east of this Haskell well?

A. Oh, yes; there are several wells a mile and a half east.

Q. When were they put down?

A. Three years ago, I believe. I am not sure. I don't know and I can't say.

Q. It was long after the Haskell well was put down?

A. Oh, yes.

Q. Were they put down after this well that was about three quarters of a mile east?

A. Yes; they were put down afterwards.

Q. I understood you to say that the work was done in cutting those trenches and extending that tunnel in this swamp land--that it was done in the latter part of the 80's or beginning of the 90's?

A. As near as I can remember. I don't remember when it was.

Q. Are you sure it was before the Haskell well was put down?

A. Oh, yes.

The Court: Q. Where do you reside as regards this cienega that you are speaking of?

A. North.

Q. How far from the cienega?

A. About two miles. I did at that time. Subsequently I lived about a mile and a quarter.

Q. Where do you get your water?

A. From the Cucamonga Canyon, away up north.

Q. Are you a stockholder in one of the companies?

L. BENJAMIN
OFFICIAL REPORTER,
SUPERIOR COURT.

A Yes, sir.

Q. What company?

A. The Hermosa Company. Not the Hermosa Company, but the Ioamosa Company.

Q. You live in Ioamosa?

A. Yes, sir.

Q. And you have a separate company?

A. Yes, sir.

Q. What is it called?

A. The Cucamonga Development Co.

Q. And you get your water up the canyon?

A. Yes, sir.

Mr. Chapman: Q. Where do you get water from?

A. Cucamonga Canyon.

Q. Is that where you have always obtained your supply of water?

A. Yes, sir.

Q. Do you know what produced those springs about this red hill?

A. What reduced them?

Q. What produced them? From whence do they proceed?

A. I suppose they come from the same source as this did.

Q. Did they come from the Cucamonga Canyon water?

A. Oh, I can't see any further into the ground than you can.

Q. There is no continuous channel from the Cucamonga Canyon to these springs?

A. No. We got the water in Cucamonga Canyon, and we have a tunnel too.

Q. In the Cucamonga Canyon?

L. BENJAMIN
OFFICIAL REPORTER,
SUPERIOR COURT.

A. Yes, sir.

Q. When was that tunnel run?

A. Well, sir, that was some time in the 90's; in the fore part of the 90's.

Q. What was the length of it?

A. 800 feet.

Q. Did it increase the flow of waters in the canyon?

A. A little.

Q. About how much?

A. I think about 6 inches. I am not sure.

Q. About how much do you get there altogether?

A. Well, it varies from 75 to 150 inches.

Q. Have you been getting more water in the last three or four or five years than you had before?

A. Oh, I think not.

Q. About as much?

A. About the same. I don't think there is any variation.

The Court: Q. Do you get most of your water from the stream?

A. Oh, yes; we get it all from the stream.

Q. You don't get any from the tunnel at all?

A. The tunnel is run in under the stream and the water of the stream is turned right into the tunnel, so we get it all through the tunnel.

Q. Then the tunnel as an independent proposition gives you no more water?

A. I think about six inches more before they turned the stream in. They thought there was about 6 inches running in the tunnel.

Q. But it has not been segregated since so that you know how

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OFFICIAL REPORTER,
SUPERIOR COURT.

much water is in the tunnel?

A. They are measured separately every year, but I think they estimate about 6 inches.

Mr. Chapman: Q. You estimate that you get about 6 inches from the tunnel?

A. Yes, sir.

Q. And the surface flow you turn into the tunnel so that it all comes in together?

A. Yes, sir.

Q. You have been increasing the acreage of land that you people are cultivating and irrigating from that source?

A. Not much; some.

Q. Can you tell us about how much?

A. About 30 acres.

Q. About how old now are your oldest orchards?

A. I think the oldest orchard was planted before I went there. I think they were planted in the early part of '83.

Q. About how many acres are you cultivating there altogether?

A. 530.

Q. About how many of those trees that are 20 years old now? About how many acres?

A. I don't think there is over 25 or 30 acres.

Q. About how many acres are ten years old?

Mr. Britt: We are here for a long trial. Here are orchards four or five miles away from this land in question, and we object on the ground that it is not crossexamination.

The Court. Objection sustained. Defendant excepts.

Q. Do you know of another well that is about half a mile north of the Haskell well?

A.

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OFFICIAL REPORTER,
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A Yes, sir.

Q. What is that called?

A. It is a little over half a mile. It is nearly three quarters of a mile. That is called the Sourwine well.

Q. When was that put down?

A. I think that was put down about three or four years ago.

Q. Do you know by whom?

A. By Mr. Sourwine. He was the principal mover in it.

Q. Do you know how much water is pumped from that well now?

A. About forty inches. 35 to 40 inches.

By Mr. Haskell:

Q. Where was that Sourwine well water used?

A. Mostly in Ontario.

Q. What part of the year is it pumped?

A They commence pumping about the first of June or some time in June, and then pump along till the rains commence.

Q. How much water comes out of the Cucamonga Canyon in the winter time? Is there a flood stream in the winter time?

A. Oh, yes; sometimes a thousand inches or two thousand inches.

Q. Where does that water go to?

A. I suppose it goes to the sea.

Q. In what direction does it run?

A. South.

Q. Towards the Cucamonga Springs?

A. Yes, sir.

Q. Does any of it pass down through the channels of the Cucamonga Springs in the flood times of winter?

Mr. Gregg: Objected to as leading.

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OFFICIAL REPORTER,
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Mr. Britt: Q. This canyon that you speak of where the Hermosa Company gets its water, that is a mountain canyon?

A. Yes, sir.

Q. And it is five or six miles north of the Cucamonga vineyard?

A? Yes, sir; three or four miles, any way.

Q. That is, three or four miles to the mouth of it?

A. Yes, sir.

The Court: You may be under the impression that it was the Hermosa Company. He has been testifying to the Icamosa Company. There are two of those companies.

A. Yes, sir; there is two companies.

Mr. Britt: Q. I mean the company from which you get your water.

A. Yes, sir.

Q. That company gets its water away up in the mountain canyon?

A. Yes, sir.

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Here the Court takes a recess until to-morrow, May 15, 1907, at ten o'clock in the forenoon.

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I. BENJAMIN
OFFICIAL REPORTER,
SUPERIOR COURT.

DEFENDANT.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Company, et al.

Plaintiff

vs.

San Antonio Water Company

Defendant

VOLUME II.

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I. BENJAMIN, Official Reporter

May 15, 1907. Sec ond Day.

F. E. TRASK.

F. E. Trask, heretofore sworn and examined, being re-called for plaintiffs testified as follows:-

DIRECT EXAMINATION.

MR. BRITT. Q. Mr. Trask, you were asked yesterday about the measurements made by you in August 1896, of the water flowing in the creek which drains the area called the Cucamonga Springs, and you thought you couldn't tell the date or the amount without reference to your data. I will ask you if you have some notations now which enable you to state?

A. I have my note books.

Q. Refer, if you please, to your note books containing the records of your transactions on August 20, 1896.

A. I have the record before me.

Q. Did you make on that date a measurement of the creek that I have just now mentioned?

A. At 2:30 on August 20, 1896, I measured at the creek division box (creek division box is the designation given of the weir over which the waters are measured).

Q. Please tell us where that creek division box is located with reference to the winery?

A. Well, it is practically directly north.

Q. About how far distant? A few hundred feet?

A. Oh, yes; it must be a thousand feet or something like that, approximately; a thousand feet; maybe a little more than that or maybe a little less.

THE COURT. Q. About the same distance above the bridge?

A. Yes; about the same distance above the bridge. The road takes a bend

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OFFICIAL REPORTER,
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takes a bend there. It may be a little less than a thousand feet.

MR. BRITT. Q. What was the result of the measurement?

A. The result of the measurement was 132.4 inches.

Q. That is, a measurement under a four inch pressure?

A. Yes, sir. I would like to state in connection with all my measurements that I will give in this case, they will be on a basis of 50 miners inches to a cubic foot per second flow

THE COURT. That is tantamount to a measurement under a four inch pressure.

MR. BRITT. Q. Does that include all the water flowing in the creek at that point?

A. That was all the water flowing over the weir on that day.

Q. At that time was the water being diverted from the creek into any artificial appliance pipe or conduit?

A. I think the conditions obtaining on that date were similar to what I have seen ther repeatedly. The waters of those cienegas and springs were gathered at a point in the flood channel or creek, as designated here, and taken into a pipe line and conducted to this measuring box.

Q. And from the measuring box what became of it?

A. I didn't ascertain, but I know it was divided into different portions and distributed from that point. I have no occasion to inquire where.

Q. Very well. On August 19, 1897, did you make a measurement of the same water at the same place?

A. My date is August 10.

Q. That is right. I should have said August 10?

A. 1897. At the same place and presumably under the same

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conditions.

Q. What was the hour?

A. 1:15 P. M. I had a discharge there of 104.9 inches.

Q. Did you again make a measurement at the same place on August 13, 1898?

A. Yes, sir.

Q. With what result?

A. 76.68 inches.

Q. You know the work there known as the "Y" tunnel, a little way to the east from this creek and on the same direct line, th t is, section four, township one south, range seven west?

A. I know of the "Y" tunnel which is located nearly north of the box through which these measurements were made.

Q. Did you make measurements of the water proceeding from the "Y" tunnel on those same dates?

A. I did.

Q. Give us the results of those measurements if you please? First, on August 20, 1896?

A. August 20, 1896, I found 137.9 inches.

Q. And on August 10, 1897?

A. 120.1 inches.

Q. And on August 13, 1898?

A. 95.91 inches.

Q. Now at the same times did you make measurements of the water flowing from what was called the China cienega on the same tract of land, and in the near neighborhood of the "Y" tunnel?

A. Yes, sir. I made measurements at the springs which I designated as south west of the "Y" tunnel.

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SUPERIOR COURT.

Q. That would be almost a line between the "Y" tunnel and the first division box that you measured?

A. Well, it would be west of such a line.

Q. It would be east of the creek?

A. Yes, sir, east of the creek.

Q. How much water did you find?

A. August 20, 1896, I found 11.25 inches.
August 10, 1897, 10.50 inches
August 13, 1898, 7.84 inches.

Q. At those times that you have mentioned what was being done so far as you observed at the time with the water flowing from the "Y" tunnel?

A. I had no occasion to ascertain the use that water was put to.

Q. Was it collected into a pipe or other conduit and taken away anywhere?

A. It was.

Q. How about the water escaping from the China cienega?

A. At the time those measurements were made, and I think at all times, but I won't be positive as to that,-- but part of the time, at least, the water from the springs was used by Chinamen on the market garden or truck garden below, in and around the spring.

Q. What was the situ tion of that market garden with reference to the winery on the place?

A. It was north.

Q. Were Chinese in occupation of that market garden at the time you were there? You could see they were at wo k there?

A. I saw they were at work there.

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Q. Had you previous to those dates made any measurements of the water at those same places, that is before August 20 , ~~189~~ 1896?

A. I made such measurements in 1895.

Q. At the same place?

A. I think at the same place, yes, sir.

Q. Let us know what you found in the matter of water at that time?

A. On August 5, 1895, I measured the springs at the same place as heretofore mentioned, finding 11.42 inches of water.

Q. What springs were those?

A. Springs southwest of the tunnel.

Q. That is the China cienega?

A. China cienega designated. I measured the tunnel water and found 134.49 inches.

MR. WAT RS. Q. At the "Y" tunnel?

A. The "Y" tunnel. The point of the measurement of all that "Y" tunnel water was at the box known as the Tunnel Division Box.

MR. CHAPMAN. Q. Where is that situated?

MR. BRITT. I will ask Mr. Trask to show us presently on the map.

A. On the same date, measured wat r at the Creek Division Box.

MR. STEVENS. Q. What date was that?

A. August 5, 1895. On the same date I measured water at the Creek Division Box and found 161.45 miners inches.

MR. BRITT. Q. Previous to 1895 had you made any measurements of water in those localities?

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A. No, sir.

Q. Subsequent to 1898 did you make any measurements at those localities?

A. Yes, sir.

Q. Have you the record?

A. On February 1, 1900, I find here on Februay 1, 1900 measurement of the tunnel division box of 77.7 inches.

Q. That is the "Y" tunnel?

A. Yes, sir.

Q. How about the creek division box?

A. I don't have it on that date. On February 4, 1900, I have a measurement at the Creek Division Box of 97.05 inches; On the same date the tunnel division box of 77.2 inches.

Q. Did you measure the China cienega then?

A. No, sir.

Q. Do you remember whether there was any water flowing at that time from the China cienega?

A. I seem to have made no note of it here, I couldn't say from recollection. On February 17, 1900, measured the water at the Creek Division Box and found 89.3 inches; at the tunnel Division Box the same date 71.6 inches.

Q. At those times was there any rainfall to cause surface discharge?

A. I would have to refresh my mind with rainfall data to answer that question.

Q. Well, proceed later on; have you a later measurement still?

A. March 12, 1900, Creek Division Box 79.05 inches; same date tunnel Division Box 71.1 inches. April 6, 1900, Tunnel

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Division Box 64.25 inches; Creek Division Box 72.9.

June 5th, 1900, Creek Division Box 73.5; Tunnel Division Box 71.75.

July 3, 1900, Tunnel Division Box, 72.65; Creek Division Box 55.8

August 7th, 1900, Tunnel Division Box, 88.3; Creek Division Box 63.9:

August 31, 1900, Tunnel Division Box 70.85; Creek Division Box 54.8.

October 9th, 1900, Creek Division Box 54.2; Tunnel Division Box 63.8.

Q. Have you any measurements made in 1901?

A. No, sir.

Q. Or in 1902?

A. No, sir.

Q. Any time subsdquent to 1900?

A. Yes, sir.

Q. In what year?

A. 1904, 1905, 1906, 1907.

Q. Will you give us those please.

A. I have more or less measurements; I have not computed but a very few of them.

Q. Have you computed those in 1904?

A. I think probably I have a few, yes.

Q. Will you refer to those please?

A. All these measurements to which I have referred as having made in 1904 and 1907 inclusive were made only at the Creek Division Box; and I see from my notes here that I have only three or four of them that have been computed. During

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that time engineers of your clients have accurate records.
MR. STEVENS. Q. What year is that, Mr. Trask?
MR. BRITT. 1904.
A. Now do I understand you wish those that I have computed?
A. Yes; those that you computed in 1904, the dates and the amounts and I will probably ask you something about the subsequent measurements.
A. April 11, 1904, Creek Division Box 10.52: May 7, 1904, 13.88 inches. June 18, 1904, 7.8; July 9, 1904, 7.2 inches; October 4, 1904, 4.6 inches. October 29, 1904, 3.35 inches; That is all I have in 1904.
Q. That is all that you have computed?
A. That is all that I have computed, yes, sir.
Q. Did you make any measurements that year in August which you have not yet computed but of which you have the data?
A. Yes, sir; I find I have three measurements.
Q. Give us those please, give us the elements from which the result may be computed?
A. At that time there were two weirs, each having a length of .836 of a foot; and the depth of water on August the de th of water was .075. On August 13th, the depth of water was .069. On August 27, the depth of water was .063.
Q. Any measurements in September that year?
A. I have one.
Q. What does that show?
A. September 3, depth of water was .061.
BY THE COURT. Q. Is there any allowance to be made there for the velocity of the water there over that weir?
A. That weir would be fairly close. Of course the condi-

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tions were not perfect.

Q. You do not allow for velocitiy at all?

A. No; at all times there was a large pondage there, ample.

MR. BRITT. Q. All of thesee measurements that you have spoken of were made at the same place, the division box?

A. Yes, sir, the division box which I described earlier in my testimony.

Q. And the figures in all these instances mean inches of water measured under such a pressure that the flow would be equivalent to the 50th part of a cubic foot per second?

A. yes, sir.

Q. Now in 1904, when you made the measurements at the division Box was there any water escaping from the "Y" tunnel at all?

A. No, sir.

Q Do you know from any observation made by yourself when he water ceased to flow from the "Y" tunnel?

A. I do not.

Q. At the 1904 measurements was there any water escaping from the China cienega at all?

A. Undoubtedly not although I did not look into it thoroughly.

Q What was the last time or about the last time when you noticed any water escaping either from that "Y" tunnel or that China cienega?

A. The date of the last measurement I gave you in 1900, October 9th was the date of my last trip for some years over this field covered by these cienegas and measurements.

Q You made those measurements I understood you to say at

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the request of Mr. Somers who was the superintendent of the vineyard property at that time?

A. Part of them only; the measurements in the years 1895-1898, inclusive, were made at the request of Mr. Somers; the balance were made at the request of the San Antonio Water Company.

Q. Now I will ask you to step here and indicate on this map the locality approximately of the Creek Division Box assuming that this map represents section 4, the tract of land known as section 4, in township 1 south, range 7 west, containing a representation of the clocality about whic you have been testifying. The San Bernardino road is indicated here by the words "San Bernardino County Road"; and the location of the winery is marked by the word "Winery", with a parallelogram or rather a rectangular figure drawn around it; and a little to the left of it looking toward the top of the map is a figure bounded by straight lines marked "Reche Place". Now indicate about on the map the location of this creek division box.

A. What number is this?

A. We will call it plaintiffs' Exhibit number 1.

A. On Plaintiffs' Exhibit Number 1, the Creek Division Box is located in section 4, township 1 south, 7 west, and about 1400 feet north of the southeast corner of said section 4, and about 70 feet west of the section line between sections 3 and 4, and it is marked with a small circle with the words "Division Box. Elevation 1279".

Q. Now, on the same map, indicate about the place of the Tunnel Division Box-- the place where you measured the water

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escaping from the "Y" tunnel?

A. The tunnel division box is indicated by a circle on Plaintiffs' Exhibit Number 1. The circle is designated "Division Box 1. Elevation 1353" and is located about 2200 feet south of the northeast corner of section 4, township 1 south, range 7 west, and about 60 feet east of section line between sections 3 and 4 --

MR. CHAPMAN. Q. East or west?

A. West.

MR. BRITT. Q. All right. About where was the ~~fixxx xxxxxxx~~ place of measurement of the water flowing from the China cienega, as near as you recollect?

A. The place of measurement of the China cienega springs was at a point about directly west of the tunnel division box, and distant a out 500 feet.

MR. CHAPMAN. Q. All of your measurements were made at one or the other of those points?

A. Yes, sir.

MR. BRITT. Q. Now, Mr. Trask, I will ask you further about those wells. The Haskell well, I think you said, is number 7 in the order of location?

A. Yes, sir.

Q. When was that well first pumped by the San Antonio Water Company?

A. My recollection is it was in--

Q. Do your notes show?

A. No; I have no record of-- I took no measurements of the first pumping of the well.

Q. By whom was that first pumping carried on?

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A. That well was pumped before the San ntonio Company secured possession of it; it was pumped by Mr. Haskell.

Q. When did the San Antonio Water Company obtain possession of it?

A. I would have to go to some notes which I haven't here, to show when they purchased it by resolutionx. But my recollection is that it was in 1899, I think some time in the spring or summer.

Q. Of 1899?

A. Yes; but I can't give you the date.

Q. Then that Company sunk the well much lower than it was before?

A. My recollection is that the Company pumped th t well some and ascertained what its capacity was at the depth at which they took it.

Q. What was the depth?

A. Some where about 60 feet. It was a shaft at that time. There had been no bored well.

Q. Did you make any observations of the quantity f of water discharged from it when it was pumped from a depth of 60 f et?

A. I have no measurement, but my recollection is th t it was estimated to be about 20 inches, and the well was sunk or lowered to a depth of something like 95 feet.

Q. That was by boring or drilling?

A. Yes, sir; the pumping and sinking went on simultaneously.

Q. When was that sinking accomplished? In 1899?

A. I think it was, yes, sir. The sinking was accomplished or the greater part of it was accomplished before the well was bored. That is, the xxxx washaft sinking was accomplished.

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Q/ Down to a depth of about 90 feet?

A. I couldn't say the depth of the well at the time the well borers took possession and sunk to a considerable depth.

Q. Was it the next year that the well borers took possession and sunk it to a depth of some 600 feet or more?

A. My recollection is that they took possession in 1899 and that the well was sunk and pumped in that year

Q. Have you any data showing when the pumping began from the deep wells?

A. I have been unable to find any measurements giving the accurate amount pumped from that well earlier than February 11, 1900.

Q. What was that?

A. From that date on I have several. February 11, 1900, my records show 122.7.

Q. That is the first record you have?

A. That is the first record I have been able to find.

Q. Have you any recollection of measuring it at all previous to that time?

A. I have no recollection. You understand, that I make thousands of these measurements and I can only trust my records. I went through them as carefully as I could to get the first measurement. If I have another I will come across it in my further search.

Q. If you had made previous measurements y u would have records of them?

A. Oh, yes. But this is the earliest that I could get from my search last night.

Q. What sort of a pump was used to lift thi quantity of

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water?

A. A centrifugal pump.

Q. What is the diameter of the well?

A. My records shows that the shaft was a 6 by 10 foot shaft ; that the casing was 15 inches down to 199 feet, and the balance 12 inch casing.

Q. To what depth?

A. To a depth of 649 feet, total from the surface.

Q. Now give us the subsequent measurements of the discharge, please?

A. February 17, 1900, 108.5;
March 5, 1900, 118.2;
March 12, 1900, 132.3;
April 1, 1900, 118.
April 3, 1900, 117.3;
May 8, 1900, 12[illegible].9;
June 5, 1900, 99.1;
July 3, 1900, 101.65;
August 31, 1900, 110.7.

Q. Any more that year?

A. No, sir, I have nothing further in the way of redords on that well till 1904, from the beginning of which measurements up to the present time I have kept a fairly good record.

Q. Will you give us the discharge of the well in 1904?

A. I will have to qualify or correct that statement in regard to well number 7, which was the Haskell well number 1, and state that I have no further measurements on that well. That well number 7 was not pumped during the years I have named excepting for a short interval once or twice for a few hours.

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On the other hand, well number 8, which was Haskell Number 2, has been pumped during those years. I confused them in my mind.

Q. I think you stated yesterday that those wells are about 200 feet apart?

A. I measured that last night and I have that data, and I think it is a little less than that.

THE COURT. Q. Have you a tabulation of the measurements of all those wells covering the different periods?

A. I have; yes, sir. I prepared it thinking that it was in line with the request of Mr. Britt.

THE COURT. Perhaps we had better use the tabulation and introduce it as an exhibit.

A. I made a special effort last night to secure the data which I thought you required in your question, and I have tabulated such data and have it in shape so that it can be put into the records without reading.

MR. BRITT. Q. You have it tabulated have you?

A. Yes, sir.

Q. Let me see it. What was the distance of those two Haskell wells apart exactly?

A. The scaling from the map indicates 120 feet as near as I can make it. You asked for those distances last night. I might give them to you seriatim and put them quickly into the record.

Q. If you please.

A. Well number 1 is about 720 feet west and about 850 feet north of the northwest corner of section 4.

Well number 2, is east about 510 feet from number 1;

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Well number 3 is east distant about 450 feet from well number 2; Well number 4 is east distant about 700 feet from well number 3; Well number 5 is east distant about 540 feet from well no. 4; Well no. 6 is east distant about 780 feet from well n0/ 5; well no. 7 is east about 1500 feet from well no. 6; well number 8 is east idstant about 120 feet from well no. 7; Wells numbers 6, 7, and 8 are about 750 feet north of Base Line, while wells 1 to 5 inclusive are about 850 feet north of Base Line.

Q. Which one of those Haskell wells furnished the water which you measured, commencing in February of 1900? You gave the figures a while ago beginning with a measurement in February 1900 on the Haskell well. Was that number 7 or 8?

A. That was number 7 and was correctly put into the testimony.

Q. I notice in this tabulation that there are no measurements given as regards numbers 6 and 7; was that because they were not pumped or because you haven't observations?

A. It is because they were not pumped. I might add, in relation to well number 6, the same qualification which I made before to well number 7, that well number 6 was occasionally pumped a few hours, but at no time did I get any measurement of it when the amount was normal.

Q. Well number 7 which was not pumped was the one on which you made those earlier measurements commencing in February 1900, but after that time it was only pumped at occasional intervals?

A. That is true, with this qualification; that they were very few and far between. The pumpin practically amounted to

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nothing.

Q. Was the pumping apparatus which had been in well number 7 transferred to the one which you call well number 8?

A. No, sir.

Q. Well number 8 seems to have been pumped continuously during the seasons?

A. Well number 8 has been pumped during the years 1904 and 1905. I think none of the wells have been pumped since with the exception of just a few hours for some special purpose.

Mr. Britt, if you will pardon me, in order to make the data which I have put in, complete, covering these wells which you have a list of, I would like to add some measurements made at well No. 3, and well No. 8, taken in the year 1900, since I have the others; with your permission I will put it into the record as there are only a few of them: Well No. 8 I have two measurements made in the year 1900, October 9th, 54.65 inches; and June 23, 1903, Well No. 8, 91.2 inches.

Now I have some measurements made of well No. 3 beginning May 8th, 1900, 53.65; June 5th, 1900, 50. July 3rd, 1900, 81.5. August 7th, 1900, 111.15. August 31st, 1900, 99.1. October 9th, 1900, 83.85. June 23rd, 1903, 60.8. That will complete my record of the wells north of 16th Street, covered in the tabulated statement which I have presented.

Q. This well No. 8, the well which seems to have been pumped subsequently to 1900, was that the same diameter as the other Haskell well?

A. I find I have no record of that well; presumably it was.

Q. What was the depth of it compared with the other well, or what was its absolute depth.

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A. The depth of well No. 8 is given as 514 feet.
A. How much of that was shaft and how much of it was drilled?
A. I don't know the depth of shaft, but presumably as it was drilled about the same time as the other, shortly after, that the depths were approximately the same; it would average about the same; it would be a natural conclusion.
Q. Do you know the size of that well No. 8?
A. I have no notes of it, but I presume it is the same as the other.
Q. Let us know if you can the diameter of those other wells, 1, 2, 3, 4, 5, and 6?
A. My record shows the depth of well No. 1 to be 638 feet; I have no notes of the diameter of well No. 2; my notes show the depth to be 624 feet; I have no notes of the diameter; well No. 3 my notes show to have a depth of 640 feet, and I have no record of the diameter. I am unable to find anywhere in my notes the depths of wells Nos. 4, 5, and 6. From my recollection well No. 6, which is commonly known as the Rubio well was pumped for a while by Mr. Rubio to irrigate, in sufficient quantity to irrigate his orange grove, and I think it was pumped a- a shaft sunk down to water and pumped for one or two years; but priot to his sale of the property to the San Antonio Water Company he sunk a well, my recollection being about 180 feet .
Q. What was the date of that sale let me ask parenthetically?
IA. I can't give it to you; I could get it from the records but I would have to go to them. I think that is all the data that I can give you relative to the depths or to the size of any of those wells.

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Q. Did the San Antonio Water Company deepen the Rubio well to any extent?

A. I think they have deepened it some, but how much I don't know. I think later you can get th t data from the San Antonio books.

Q. These wells, 1, 2, 3, 4, and 5 were they part shaft and part drilled wells, the same as in the case of the Haskell wells?

A. Well the ordinary practice is to sink a shaft before setting up the well tools; to what depth they put those shafts down I don't know because I was not present when those that I have not specified were drilled.

Q. Were those wells all pumped with the same sort of pumping machinery, centrifugal pumps?

A. Yes, sir; so far a my recollection covers them.

Q. And all the drilled wells were I suppose cased and the casing peeforated in the usual way?

A. Yes, sir; so far as I know.

Q. Have you the record of the depth of water in those several wells when they were first began to be pumped; the elevation of the water in the several wells when they first began to pump?

A. Which question do you wish me to answer.

Q. What I meant was the level below the surface of the ground at which the water stood in the wells when the wells first began to be pumped?

A. You wich a statement of the water level, water elevation of the wells at different dates. Now the first pumpung was away back, in the early '90 s.

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Q. That is the first pumping you mean from the Haskell well or well number 1.

A. I am referring more particularly to the Sixteenth street wells and what is known now as well number 3.

A. Have you a record of the depth of water in that well at specific dates, the el vation of the water I should say?

A. I have, yes, sir.

Q. Well, let us know what it was. That is well number 3.

A. Mr. Britt, do you care for the depth of any other wells? Are you going to ask for more than one, if it is a proper question? I have a tabulation here.

Q. Yes, I would like to know-- are these the result of your own observation?

A. Yes, sir.

Q. Well, let us have the tabulation if you can supply it to us. We want this copied into the record. It can either be read into the record or be delivered to the reporter and copied by him.

A. I was going to suggest that the data which you have asked for would come in more properly after my statements covering the measurements.

THE COURT. Wouldn't it be the safest way to let Mr. Trask and the reporter make up this record during some recess.

A. My suggestion would be that the tabulations be turned over to the reporter and be put into the record in their proper place and I would check them over afterwards; if I find any mistakes I will show them to the reporter and I suppose they will be corrected and then the record will be correct and complete. I bunted in in a measure in order that

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you might get that in properly in its place.

MR. BRITT. I will pass this sheet to the reporter without marking it as an exhibit and will ask him to copy into the record the measurements of pumped water, wells north of Sixteenth street by F. E. Trask, being the tabulation to which the witness first referred a little while ago, showing the quantity of water pumped from the several wells. I will ask the reporter to copy the tabulation into the record without making the paper an exhibit .

(The following is a copy of the paper referred to.)

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Measurements of Pumped Water-Wells North of 16th Street

By F. L. Trask.

Date	#1	#2	#3	#4	#5	#8	Remarks.
1904.							
May 19						62.70	Began pumping #8 at 10:35 A.M.
" 26						78.90	
June 2						78.50	
" 11						87.95	
" 18			48.89			82.70	Began pumping #3 at 5 P.M. June 16, '04.
" 27			43.40			83.10	
July 2			42.26	66.00		89.16	Began pumping #5, at 7 A.M. July 1st, '04.
" 9			35.06	58.70		81.14	Began pumping #4 at — July 7, '04
" 16			29.44	58.31	35.35	78.50	
" 26			61.92	53.67	52.62	72.84	
" 30			61.92	55.50	53.34	72.46	Began pumping #2 July 30 '04
Aug. 8		49.91	54.04	72.84	61.60	69.00	
Aug. 13		54.75	60.85	76.70	65.64	76.33	
" 27		35.98	53.67	75.53	66.38	78.90	
Sept. 3		52.99	51.61	68.66	54.75	69.80	
" 18		63.42	48.34	66.80		72.84	Began pumping #1, Sept. 20, '04.
Sept. 23	54.75	64.15	55.45	74.00		76.75	
Oct. 4	62.30	66.00		74.00	59.40	74.40	
" 8	60.85	62.30		70.55	62.30	72.10	
" 13	60.85	69.00		75.95	60.85	79.50	
" 15	59.40	67.50		75.55	62.30	75.15	
Oct. 29	59.80	63.42		74.00	62.30	71.00	
Nov. 18	48.70	52.99	48.34	64.53		69.00	
" 19	58.31	60.12	61.56	72.10		70.40	
Dec. 3	53.00	58.70	60.47	75.15		64.53	
" 24		65.30	62.67	74.37		74.00	

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Date	#1	#2	#3	#4	#5	#8	Remarks.
1905----------							
Jan. 7		62.67	63.03	72.47		70.39	Closed down for season 11 A.M. Jan 9'05
Aug. 16						53.68	Began pumping #8 about Aug.15,'05
Sept. 8	59.00	66.00				75.95	Began pumping #1 &#2 about Sept.1,'05
" 15	60.85	67.50	59.40			75.95	Began pumping #3 & #4 about Sept.15, '05.
" 23	60.47	63.80	61.56	54.75		72.10	
" 30	57.99	68.66	60.47	69.00		70.10	
Oct. 7	59.40	64.53	60.12	70.10		73.64	
" 14	54.04	60.12	56.50	61.23		69.00	
" 21	57.99	62.30	59.80	69.00		68.66	
" 28	59.76	66.00	60.85	64.53		67.61	
Nov. 4	54.39	59.76	52.99	65.30		57.25	Closed down for season 4 P.M. Nov. 5

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Q. I wish you would give here independent of the tabulation the first observation on well number 3, that height or elevation rather of the water in the well.

A. The first record I have in my notes is of January 1900 and the water elevation was 1402.9, above mean sea level.

Q. And the other wells will be shown in the tabulation along with them?

A. The other wells will be shown in the tabulation, but it is several observations. I have in this tabulation wells 1 to 8 inclusive; well numb r "S" which is a well located in the northeasterly portion of the 90 acre tract as designated on plaintiffs' Exhibit number 1. Well number "B" which is a well in the westerly branch of the "Y" tunnel and near its heading; and well number "K" which is a well located in lot 12 designated on plaintiffs' Exhibit Number 1 as "Shaft K" and notheasterly from the intersection of Hellman Avenue and the Base Line probably about 1000 feet. And on the last page of these tabulations I have added ~~xxxxx~~ thereto well number 9 and given water elevations referring to the mean sea level; and well number 9 is located in the west part of section 4, township 1 south range 7 west, at the head or terminus of what is known as the Eadie or Cucamonga Tunnel Number 2.

THE COURT. Q. Is that in the Red Hill.

A. It would be west of the Red Hills.

Q. I understand that these tabulations of well "K" and several others that you have mentioned are contained in the same sheets with those showing the elevations of water in the series of wells 1 to 8 about which I was questioning you?

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A. They are additional to those which you were questioning me about.

MR. BRITT. As to those I have not any occasion at present, and I don't quite make out myself from the description you have given, precisely where they are situated-- as to those it will be understood that while we may want them as our evidence, that we are not now offering them. I am asking this witness about the measurements on the series of 8 wells but not about the others he mentioned. It may be that upon examination they may be desirable but for the present I would like to have it understood that they are not offered as our evidence.

MR. CHAPMAN. We want it understood that they are not offered as ours.

THE COURT. Suppose the court saves you gentlemen any responsibility and asks for those measurements to go in. I would like all the information I can get.

MR. CHAPMAN. Those measurements may become important in some respects but in others we think they are not admissible. The complaint in this case so far as the injury charged is concerned designates the wells by which that injury has been wrought and some of these that he has been testifying to now are not included in that description; but it is possible that they might shed some light on the gen ral subject independently of the question of whether they effected any injury or not, or of whether the plaintiffs would be entitled to recover if they did.

THE COURT. I suppose the theory is th t there is a body of water in contact not partaking of the nature of a stream

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exactly and it would seem that anyt ing that cuts that body of water would be pertinent at least to some degree to show the conditions there.

MR. CHAPMAN. That may be; that isn't the reason we did not object. I didn't know for what purpose they were offered and I learn now from Mr. Britt they are not offered at all , that they may be at some future time; they may have some bearing on the question.

MR. BRITT. The history of this episode is this: I was going to ask the witness for particular elevations at particular dates and the witness said he had a general tabulation of the elevation of the wells extending over considerable pe iod of time and the witness ha s suggested that the elevations of several other wells are also shown in this tabulation. But at the present time I want it understood that as to those latter wells it is not offered by either side, as the evidence of either plaintiff, intervenor or defend nts at this time.

THE COURT. How would it do to let it be copied into the record with the understanding that it is not in evidence. If it is all tabulated together it would be better to have it together in the record.

MR. BRITT. Yes, sir.

MR. CHAPMAN. That is not objectionable to us.

MR. WATERS. I make the suggestion if you are not prepared to say wh ther you want it in or not, that you take time to determine that question.

MR. BRITT. I understand it is to be copied into the record and either party may offer the whole or any part of it that

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they desire in the future.

MR. HASKELL. I desire to explain the attitude of the intervenors here and th t is that of necessity whether we are willing or not, that everything that affects that water plane must get before the court in order to arrive at an understanding of the situation. We think it ought to go in in the first instance, no matter whether it is for us or against us.

MR. BRITT. We may want to put it in in connection with some other evidence. I think that what was stated here a moment ago by the Court had better be the understanding of all parties for the present and if that is agreeable to the court we will have it so understood.

(Here follows the tabulation as referred to.)

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Water Elevations -- Cucamonga Red-Hill.

Date	Well #1.	Well #2.	Well #3.	Well #4.	Well #5.	Well #6.
Jan. 1900			1402.9			1396.0
July 3,"			1379.6			1376.5
Oct. 9,"						1381.3
1904						
April 11	1366.3		1349.0	1346.4	1346.5	
" 28	1366.1		1347.8	1346.3	1346.5	
May 7	1366.4		1348.5	1346.9	1348.2	
" 12	1366.3	1349.3	1348.4	1347.3	1347.2	1347.0
" 19	1366.2		1348.4	1347.3	1348.1	1347.1
" 26	1366.0		1347.4	1342.9	1346.2	1346.2
June 2	1365.9	1348.5	1347.1	1346.4	1346.3	1345.9
" 11	1365.6	1346.8	1347.8	1345.8	1346.8	1345.3
" 18	1365.2	1345.9		1344.7	1345.2	1344.7
" 27	1364.9	1345.3		1343.8	1344.0	1343.8
July 2	1364.7	1344.8			1343.0	1343.4
" 9	1364.1	1344.2			1342.0	1342.6
" 16	1363.6	1344.0				1341.4
" 26	1362.9	1345.3				1340.3
" 30	1362.4					1339.9
Aug. 8	1361.7	1338.3				1339.3
" 13	1361.1					1338.1
" 27	1360.7					1336.4
Sept. 3						1335.9
Oct. 4			1331.3			1333.9
" 8			1330.9			1333.5
" 15			1330.9			1332.8

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Oct 29			1330.8			1332.0
Nov. 12					1329.7	1331.6
" 18					1329.4	1331.6
Dec. 3				1328.8		1331.0

1900.	Well #7	Well #8	Well #S	Well #B	Well #K	Well
Jan.	1393.1			1385.8		
July 3	1379.2					
Oct. 9	1376.7			1373.7		
1904						
April 11	1347.0	1347.2			1288.5	
" 28			1344.9			
May 7	1347.6	1348.2			1290.9	
" 12	1347.4	1347.8	1345.1	1335.4		
" 19	1347.0	1347.4	1345.2			
" 26	1343.8		1343.6	1335.2		
June 2	1343.3		1343.2			
" 11	1342.1		1342.2			
" 18	1341.8		1341.8	1333.6	1289.6	
" 27	1341.1		1341.2	1333.3	1288.7	
July 2	1340.7		1340.9	1333.3		
" 9	1340.3		1340.1	1332.3	1287.6	
" 16	1339.5		1339.8			
" 26	1338.9		1339.1	1330.5		
" 30	1338.3		1338.7	1330.5		
Aug. 8	1337.6		1338.0	1329.6		
" 13	1337.0		1337.4	1329.2		
" 27	1335.7		1336.1	1328.0		

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Sept. 3	1335.3		1335.7	1327.5		
" 23			1334.3	1325.8		
Oct. 4	1333.1		1333.4	1325.2		
" 8	1332.7		1333.2	1324.8		
" 15	1332.4		1332.8	1324.6		
" 29	1331.6		1331.8	1324.5		
Nov. 12	1331.2		1331.3			
" 18	1331.0		1331.3	1324.4	1281.9	
Dec. 3	1331.2		1330.2	1323.7		

Water Elevation -- Cucamonga Red-Hill. Continued.

Date	Well #1	Well #2	Well #3	Well #4	Well #5	Well #6
Dec.17'04					1328.6	1330.5
" 24	1329.9				1328.3	1330.1
1905.						
Jan. 7	1330.4				1328.4	1330.1
" 11	1335.4	1334.3	1333.1	1331.4	1331.2	1331.
" 17	1337.1	1335.7	1335.0	1333.2	1333.1	1332.4
" 26	1337.4	1336.9	1336.2	1334.9	1334.4	1333.9
Feb. 4	1338.4	1337.7	1336.5	1335.7	1335.2	1334.9
" 10	1339.9	1338.5	1337.3	1336.5	1336.2	1335.4
" 18	L340.5	1338.8	1338.4	1337.1	1336.8	1336.3
" 25	1341.0	1339.5	1338.4	1337.7	1337.3	1336.9
Mar. 4.	1341.4	1340.1	1339.2	1338.2	1337.7	1337.2
" 11	1341.7	1340.6	1339.5	1338.2	1338.3	1337.6
" 20	1342.4	1341.	1340.	1338.9	1338.8	1345.4
Apr. 3	1343.3	1340.7	1340.6	1339.9	1339.4	1339.8
" 15	1343.7	1342.4	1341.2	1340.6	1340.3	1340.4

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Apr. 22	1344.5	1342.8	1341.7	1340.9	1341.	1341.3
" 29	1344.7	1343.3	1342.3	1341.2	1341.2	1341.8
May 6	1345.1	1343.6	1342.6	1341.6	1341.8	1342.1
" 20	1346.1	1344.7	1343.7	1342.5	1342.3	1342.5
" 27	1346.6	1344.9	1344.	1343.	1343.	1343.
June 3	1347.2	1345.2	1344.3	1343..	1343.1	1343.3
" 10	1347.3	1345.4	1344.4	1343.5	1343.5	1343.6
July 1	1348.2	1346.	1345.7	1343.9	1343.7	1344.
" 8	1348.9	1346.3	1345.3	1344.2	1344.	1344.1
" 15	1346.6	1346.5	1345.3	1344.1	1344.	1344.1

1904	Well #7	Well #8	Well #S	Well #B	Well #K
Dec. 17	1330.		1330	1322.2	
" 24	1329.4		1329.7	1322.	
1905					
Jan. 7	1329.2		1329.2	1321.8	1287.5
" 11	1331.6	1331.3	1330.	1323.3	
" 17	1332.7	1332.8	1331.3	1324.	1289.8
" 26	1337.4	1334.6	1332.1	1325.4	1291.6
Feb. 4	1335.1	1335.1	1333.3	1326.8	1293.
" 10	1335.6	1336.	1333.8	1326.6	1293.8
" 18	1336.3	1336.4	1334.4	1327.6	1294.7
" 25	1337.0	1336.9	1335.0	1327.9	1295.2
Mar. 4	1337.5	1337.3	1335.8	1328.1	1295.8
" 11	1337.8	1337.6	1335.8	1328.4	1295.7
" 20	1338.4	1338.8	1336.8	1330.1	1297.3
Apr. 3	1339.2	1339.3	1337.7	1331.1	1298.4
Apr. 15	1340.3	1340.	1338.5	1331.7	1299.3

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Apr 22	1340.7	1340.5	1338.8	1331.8	1300.1
" 29	1340.8	1340.9	1338.9	1332.4	1300.4
May 6	1341.	1341.3	1339.1	1332.4	1301.
" 20	1341.7	1342.2	1339.8	1333.1	1301.7
" 27	1342.1	1342.2	1340.1	1333.4	1301.8
June 3	1342.1	1342.6	1340.2	1	1301.8
" 10	1342.4	1342.7	1340.3	1333.2	1300.9
July 1	1342.3	1342.2	1340.3	1334.	1294.4
" 8	1342.6	1342.6	1340.6	1334.4	1292.3
" 15	1342.7	1342.4			

Water Elevation-- Cucamonga Red Hill. Continued.

Date	Well #1	Well #2	Well #3	Well #4	Well #5	Well #6
Jul.29-05	1348.1	1346.6	1345.3	1344.5	1344.1	1344.1
Aug. 5-05	1347.7	1346.5	1345.4	1344.1	1344.1	1344.
" 16 "	1347.5	1346.5	1345.3	1344.1	1343.9	1343.9
Sep. 8 "		1329.	1339.3	1340.9	1340.9	1341.2
" 15 "				1338.3	1339.3	1340.5
" 23 "					1336.7	1339.
" 30 "					1335.5	1337.7
Oct. 7 "	1321.	1310.3	1318.2	1322.3	1334.5	1336.2
" 14 "					1334.	1335.5
" 21 "					1333.	1334.6
" 28 "						1334.1
Nov. 4 "					1331.1	1333.2
" 11 "	1339.6	1338.1	1337.2	1335.9	1335.5	1335.3
" 18 "	1340.9	1339.4	1338.3	1337.3	1337.0	1336.4
" 25 "	1341.8	1339.8	1339.0	1337.9	1337.7	1336.8

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Dec. 2 "	1342.5	1341.0	1340.1	1338.7	1338.5	1338.0
" 9 "	1343.	1341.7	1340.6	1340.6	1339.0	1338.7
" 20 "	1344.	1342.3	1341.4	1340.5	1340.1	1339.5
" 29 "	1344.2	1342.8	1341.9	1340.8	1340.4	1340.0

1905	Well #7	Well #8	Well #S	Well #B	Well #K
Jul.29-05	1342.4	1342.5	1340.5	1334.7	
Aug. 5 "	1342.5	1342.4		1334.8	
" 16 "	1340.9	1330.8	1340.2	1334.8	
Sep. 8 "	1338.2		1338.	1333	
" 15 "	1337.4		1337.5	1332.2	
" 23 "	1336.3		1336.3	1330.9	
" 30 "	1335.6		1335.3	1329.6	
Oct. 7"	1334.6		1334.9	1329.4	
" 14 "	1334.1		1334.1	1328.3	
" 21 "	1333.5		1333.5		
" 28 "	1332.9		1332.9	1326.8	
Nov. 4 "	1332.4		1332.2	1326.6	
" 11 "	1335.1	1335.0	1333.5	1327.6	
" 18 "	1335.9	1336.1	1334.1	1328.7	
" 25 "	1336.7	1336.5	1334.8	1329.4	
Dec. 2 "	1337.7	1337.5	1335.9	1330.2	
Dec. 9"	1337.9	1338.			
" 20 "	1339.1	1339.		1331.4	1290.5
" 29 "	1339.4	1339.4	1337.9	1332.	1291.8

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1906 Water Elevation-- Cucamonga Red Hill. Continued.

Date	Well #1	Well #2	Well #3	Well #4	Well #5	Well #6
Jan.20-06	1345.4	1343.8	1343.0	1341.9	1341.5	1341.1
Feb. 1	" 1346.2	1344.2	1343.6	1343.4	1341.9	1342.2
" 8	" 1346.3	1344.6	1344.0	1343.7	1342.8	
" 14	" 1346.9	1345.1	1343.7	1342.9	1342.9	1342.2
" 24	" 1346.9	1344.8	1344.2	1343.	1343.	1342.6
Mch. 7	" 1347.2	1345.	1344.3	1343.4	1343.2	1343.1
" 19	" 1347.6	1345.7	1344.7	1343.8	1343.5	1343.2
" 27	" 1348.1	1346.3	1345.2	1344.	1343.9	1344.
Apr.3	" 1348.4	1346.7	1345.6	1344.4	1344.6	1344.0
" 8	" 1349.1	1346.9	1346.0	1345.0	1344.8	1344.5
" 16	" 1349.0	1347.2	1346.4	1345.0	1345.0	1344.7
" 24	" 1349.4	1347.6	1346.4	1345.2	1345.3	1344.9
May 3	" 1350.0	1347.9	1347.0	1345.8	1346.0	
" 10	" 1350.4	1347.9	1347.0	1345.8	1346.0	1346.0
" 28	" 1350.8	1348.8	1348.1	1346.7	1346.8	1347.0
June 9	" 1351.9	1349.4	1348.2		1347.0	
" 16	" 1351.6	1349.2	1348.3	1346.9	1347.1	
" 30	" 1352.2	1349.8	1348.9	1347.4	1347.2	
July 7	" 1352.4	1350.3	1349.0	1347.7	1347.3	
" 18	" 1352.8	1350.1	1349.0	1347.8	1347.8	
" 27	" 1352.9	1350.6	1349.2	1347.8	1347.8	
Aug. 16	" 1353.4	1350.8	1349.4	1347.9	1347.9	
" 24	" 1354.0	1350.9	1350.0	1348.0	1346.0	
Sept.1	" 1354.3	1351.0	1350.0	1348.0	1348.0	
Note May 19	" 1350.6	1348.6	1347.5	1346.6	1346.2	

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1906	Well #7	Well #8	Well #S	Well #B	Well #K
Jan.20-06	1340.7	1340.4	1338.8	1332.9	1294.6
Feb. 1 "	1341.3	1341.2	1338.8	1333.5	
" 8 "					
" 14 "	1341.7	1341.5	1339.8		
" 24 "	1342.4	1342.4	1340.	1334.1	1297.5
Mch. 7 "	1342.5	1342.4	1340.6		
" 19 "	1343.1	1342.7	1341.6		
" 27 "	1343.7	1343.7	1341.6		1299.8
Apr. 3 "	1343.7	1343.7	1342.		1300.2
" 9 "	1343.8	1343.9			
" 16 "	1344.8	1344.8	1342.6	1335.6	1300.9
" 24 "	1344.8	1345.0	1342.9		
May 3 "					
" 10 "	1345.1	1345.4	1343.5	1336.3	1302.1
" 19 "	1345.9	1345.5	1343.5		1301.6
" 28 "	1345.9	1345.6	1343.6		
June 9 "	1345.9	1345.9	1344.4		
June 16 "	1345.5				
" 30 "	1345.8	1345.8	1344.	1337.5	
July 7 "	1346.1				
" 18 "	1345.9	1346.0		1337.9	
" 27 "	1346.3	1346.	1344.	1337.9	
Aug. 16 "	1348.2	1346.2	1344.2		
" 24 "	1346.2	1346.0			
Sept. 1 "	1346.5	1346.5	1344.3	1338.0	

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Nov. 9		1347.0	1347.2		1338.8	
" 24		1346.8	1346.9	1344.8		
Dec. 7		1347.5	1347.5	1345.7		
" 28		1347.8	1347.9	1345.8	1339.4	
Jan.11-07		1348.7	1349.0			1295.6
Feb.2	"	1349.6	1350.7	1347.8	1343.3	1320.6
" 9	"	1350.4	1350.4	1347.9	1344.0	1325.5
" 20	"	1351.6	1351.6	1349.3	1347.3	1330.6
Mch.2	"	1352.7	1352.7	1350.3	1348.4	1334.1
" 10	"	1353.6	1353.6		1349.7	1337.2
" 31	"	1356.6	1356.6	1353.4	1342.4	
Apr. 5	"					
" 16	"	1359.2	1359.1	1357.2	1356.5	1345.6
" 27	"	1360.6	1360.8	1357.8	1357.9	1346.7
May 6	"	1361.7	1361.7	1358.8	1358.3	1339.0

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MR. BRITT. Q. Are you ble to state the times when the pumping of these wells by the San Antonio Water Company, respectively, first began?

A. Why, right now I couldn't give you that data. I have not here the notes which would enable me to do that.

Q. You can obtain it ?

A. Well, there are such records in the possession of the Company.

Q. Has Mr. Leeke got them? You don't know whether they are in the court room?

A. Well, I think they are not, I know my own records are not with the exceptions of the years given in the tabulated statement which has been introduced.

MR. HASKELL Q. Who was operating the Haskell well before the San Antonio Water Company began operations there?

A. I presume Mr. Haskell the owner, I used to see him there occasionally.

Q. Was there an orchard and improvements on the property?

A. I don't believe I could describe just the improvements he had there; I know he lived there.

Q. Where was he using the water if using it at all?

A. I never saw him using t e water.

Q. It was not conveyed away from the property was it?

A. He built a small reservoi right near the well and pumped some wat r in to it. Just what h used it for I couldn't say, presumably it was used on his property.

Q. It bore no evidences of being conveyed away?

A. I never saw any evidence of its even being used on his

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property myself.

Q. After the San Antonio Water Company begun operations there did they convey the water away?

A. Part of the time.

Q. Where to?

A. Ontario.

Q. How many wells did they operate at any one time on that line that you have been testifying in regard to.

A. I think 6 was the most that was operated at any one time.

Q. Do you know how much water was taken at any one time from those wells by the San Antonio Water Company?

A. I have not measurements here on more than 5 on any particular date. By combination I find that on October 4th, 1904, the San Antonio Water Company was drawing 336.1 inches; and that on that date wells numbers 1, 2, 4, 5 and 8 were being pumped.

Q. Where was that water conveyed?

A. That wat r was conveyed to Ontario and went into the general system.

Q. In what kind of a conduit?

A. Closed conduit.

Q. Camented tunnel?

A. No, it was partially vitrified and partially cement conduits.

Q. Practically a water tight water conduit as far as leakage was concerned, wasn't it?

A. Supposedly so.

Q. How far was the first place of use distant from the point of pumping?

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A. The first water was used on the Rubio place; that was on the ground itself.

Q. That was on the ground where the water was pumped?

A. Yes, sir.

Q. Where was the next place.

A. The next place would be the Ontario Colony lands and the domestic system of Upland.

Q. About how far distant?

A. Well, probably two miles or possibly a little more at the first point; I couldn't tell without reference to a map.

Q. Were these wells operated throughout the year continuously day and night?

A. No, sir.

Q. During what portion of the year were they operated?

A. By reference to my notes and the year 1904 I find that measurements indicate that well number 1 was pumping on September 23, and on December 3 and intermediate dates which is, presumably the time that the well was pumped.

Q. What water was being pumped at that time?

A. This tabulated statement shows a minimum of 53 inches and a maximum of 62.3 inches and on various other dates it was between those.

Q. Now that was practically in the winter season, wasn't it?

A. Well, the latter end of that pumping, the latter dates, ran into the winter season.

Q. And that winter season was a very dry winter wasn't it?

A. Undoubtedly, or they wouldn't have been using the water.

Q. Do you know what use was made of that water?

A. That water was used to supply the domestic needs, what-

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ever they were, and also the irrigation demands of the orchards and groves of the Ontario Colony.

Q. But ordinarily do they operate those pumps in the winter season-- have they done so?

A. They were operated whenever they needed the water, whether winter or summer.

Q. Would the quantity of water in the winter be as much taken from those wells as it was in the summer?

A. No, ordinarily no.

Q. What proportion would you say?

A. Well, in most years those wells would not be pumped during the winter months. They would be only pumped during the latter part of the summer or early fall, or until the early rains began.

Q. About what time in the summer would they begin pumping ordinarily?

A. That would vary each year depending on the gravity supply of water they had. This pump supply has been held at all times as an extra supply to make up any deficiency from other sources.

Q. Have you any data at hand by which you can tell the exact amount of water that has been taken out there during these years or any portion of the time?

A. I have data which could be compiled and made.

Q Well, if you would compile that?

A. Well, I will need some time to do it, I have not compiled it in shape so as to present it any more definitely than I have given the statements here.

Q. Well, if you will--

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THE COURT. Q. While you are on the subject you say that the wells constituted a secondary source of supply of the San Antonio Water Company; what is the primary source?

A. Well, not strictly in that sense secondary. This is just as primary as the other; only that the San Antonio Water Company has certain gravity rights of water which are more economical to the stockholders when they are sufficient than the pumped water; and the position the San Antonio Water Company is in is this: they draw on this supply when water from the other is deficient.

THE COURT. Q. That is what I supposed you meant. What is the other supply you refer to?

A. The other supplies to which I referred are their rights in the San Antonio Canyon, their rights in the Frankish and Stamm tunnel, their rights in the Eadie or Cucamonga Tunnel Number 2, all of which waters are gravity waters.

Q. You say the pumping of water is a secondary consideration because the other is cheaper?

A. Yes, sir! and with a complete regard for this water as storage water.

MR. HASKELL. Q. Can you give us the amount of water that the San Antonio Water Company has from other sources at the present time?

MR. GREGG. I don't want to interpose any other objection only in this respect; that if we go into these matters now we will cover an immense territory. It is not responsive.

MR. HASKELL. I think it is quite material to show--

THE COURT. It may be material but it is not cross examina-

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tion.

MR. HASKELL. If the Court please, I regard this as examination in chief, being an intervenor, and interested in the case on behalf of the plaintiffs.

MR. WATERS. It is surely relevant to the question of wasting water.

THE COURT. I suppose treating it as examination in chief there is no question but what you may go into it.

MR. HASKELL. The question of reasonable use always enters into the right to take water as a factor in the case when everything else is disposed of, the reasonable use between the parties; it is a factor in any water suit.

Q. Could you give us that information.

A. I haven't it here in court.

Q. I would like for you to look up that and I will call for it later on. Now you have given certain water elevations in the data which you have placed before the court here and of course you have to assume a datum point for a starting point for your plane; what was that datum point?

A. Mean sea level.

Q. As measured by yourself?

A. No. Only in part; from records of elevation at Ontario which have been established by the United States Geological Survey and bench marks established, to which I reconcile this work.

Q. You assumed one of their points of elevation as your starting point?

A. Yes, sir.

Q. What point was that?

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A. Oh, I don't remember now, that was years ago.

Q. You are not able to give that at the present time?

A. I couldn't from memory and I don't remember the point.

Q. Therefore if there should be a variation between your testimony as to elevations and some other possible testimony that might seem to differ from it, it might turn on the question of whether you agreed on the starting point?

A. Well, that would affect the testimony and the results, only in establishing a constant between the two levels. If other testimony was introduced showing a difference in level between two dates it would probably be due to a constant shown there and it would be easily reconciled.

Q. You took the measurements of the Eadie tunnel did you ?

A. Yes, sir. No, I will have to qualify that. The measurements given in that list are not of the Eadie tunnel well. They are taken at a date since the bulkhead was put in the tunnel and show water levels at different dates taken at that point but show water levels of the tunnel rather than of the well.

Q. The well goes in to the level of the tunnel doesn't it?

A. Yes, sir.

Q. And the water level of the tunnel is taken at the point of the well number 4?

A. It was taken down the shaft of well number 9 which is the upper shaft of the Eadie tunnel.

Q. Did you take any water elevations at well number 14, the Eadie tunnel?

A. Idon't know what that well is.

Q. The very upper well in the Eadie tunnel.

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A. My measurements were taken at the upper well which in my own notation is well number 9.

Q. Will you step to the map and I want to ask you in regard to that and see if we agree in the numbers. Do you recognize this well marked on this Exhibit which I believe is to be known as Plaintiffs' Exhibit number 1, "Well numb r 14" as one of the wells of the Eadie tunnel?

A. Well, somewhere in the vicinity as represented by well 14 there is a well which is the end also of the Eadie tunnel.

Q. Have you any data in regard to that well either as to it s elevation or the volume or flow of water from that well?

A. My data of that well is as I have suggested heretofore and gives the water level in the shaft at that well during the time and subsequent to the closing of the bulkhead.

Q. Have you any measurements of the flow of wat r at the mouth of the Eadie tunnel?

A. Yes, sir.

Q. Now I wish you would produce those after the noon hour.

Here the court takes a recess until, 2 o'clock P. M.

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Afternoon Session.

MR. ASKELL. Q. Mr. Trask, were you present at any time when the borings were being made at any of those wells of which you testified this morning on the Sixteenth street line?

A. Yes.

Q. What wells?

A. I was on the ground two or three times during the time those well men were doing the boring. I think well number 3 and well number 7 were the wells they were working on at the time of my visit.

Q. How far down were they on those wells when you saw them working?

A. I don't know.

Q. At a considerable depth?

A. I couldn't say.

Q. Were they boring the shaft or boring for the wells?

A. I was speaking of the boring proper, which would be the well.

Q. At various times you have seen the dump at those wells, have you-- all of them?

A. Well, some of them;, I won't say all.

Q. You have observed the character of the dump of some of them, have you?

A. Yes, sir.

Q. What is the character of the material that has been taken out of those wells?

A. It consists of gravel, sand, some decomposed material, some clays and silt.

Q. Did you observe any wash gravel in it?

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A. I think there is an indication of wash gravel throughout. That is, the dumps would indicate that there was wash material encountered at different points in all of them.

Q. That is, material carried there by the force of a running stream of water?

A. The entire mass, in fact, would be material which would indicate that it had been transported.

Q. I asked you this morning if you had a measurement or could produce measurements or data which show the volume of water that had been taken out of those wells and carried to Ontario. Did you find that data?

A. I looked in my books and I saw that I had some data with me, and in running over it I satisfied myself that it would take a great deal of time to put it in shape to present in court.

Q. From an examination of that data what would you say was the average volume of water that had been transported during the time that the San Antonio Water Company has been in operation there from the Sixteenth street line of wells?

A. My examination has not been of sufficient magnitude or extent to enable me to say anything about it in terms that would be definite.

Q. You couldn't approximate it?

A. I wouldn't care to.

Q. Could you refer to your books and give us some of those measurements?

A. The measurements which I have are contained in that little yellow slip and in the data I gave in prior to presenting that yellow slip, and are in evidence here.

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Q. And is all in evidence here that you have?

A. I so stated, that those were all the measurements that I had here.

Q. Have you any measurements of water flowing from the Edy tunnel?

A. I have some , yes.

Q. Will you refer to your books in regard to that and give us those measurements?

MR. CHAPMAN. We want to interpose an objection before you read it, that it is irrelevant and immaterial and it is not in response to the case made by plaintiffs, who have not made any objection to or found any fault with the Edy tunnel.

MR. HASKELL. The intervenors have set u p directly that this defendant is taking water through the Edy tunnel and depleting the Cucamonga Springs.

THE COURT. The objection is overruled. Defendant excepts.

A. What I was going to say is this: some of my measurements are so that I can give them directly. Some of them are scattered through books which I have here and are made up of measurements of over 2 or 3 different weirs, and would require considerable combining.

Q Will you be here tomorrow morning?

A. So far as I know I will.

Q. Would you like the afternoon and evening to prepare further data on that or look over your memoranda?

A. I can look it over.

Q. Would that facilitate the giving of your evidence?

A. Yes, but I think I will need more time to shape this up.

Q. Then you may proceed to give us what you have, beginning

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with the first measurement.
THE COURT. Would you prefer to have an opportunity to get that data together and shape them up?
A. It makes no particular difference to me, I would just as soon do it here in court, but it will take considerable time to do it.
THE COURT. Why not let the witness get those things together out of court, Mr. Haskell.
MR. HASKELL. We are perfectly willing that he should do that.
A. They are sandwiched in with thousands of other measurements and it takes a great deal of time to sift them out.
MR. WATERS. May it please the Court, I don't wish to be insistent unduly, but this witness's testimony is rather injected, as it were, and I have for the old Settlers Water Company some half a dozen men here at considerable expense to us; Mr . Trask, I understand, is here at the expense of the enemy.
MR. CHAPMAN. I don't know whether he is or not now. You gentlemen have marked out work for him that will take for him at least a week.
MR. WATERS. I am not doing that, but I wish to address to the court this consideration; that it is within the discretion of the court, in view of the statement made by the witness, to give the witness time, and that will enable us to examine some witnesses that we have here on expense that are away from their homes and away from their work, and let them go home.
MR. CHAPMAN. Mr. Trask will have to get the information you are calling for and Mr. Haskell, during the time he is away

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from the court room. Why not let him make all the tabulations at once? It will xx take twice as long to do it in court. Some of his data are here and some with the Company and my suggestionis that he can take the days when the case is not on trial. It will take twice as long even if he had the memoranda here to get at it on the stand.

MR. WATERS. I am perfectly willing to adopt a course to enable him to get those computations out of court and so shorten up our time. My immediate object is to get rid of some witnesses that we have got here.

THE COURT. I think we all ought t. be actuated by the desire to shorten up this trial, because it is going to take a great deal of time at best.

MR. CHAPMAN. If the witness had all the records of the San Antonio Water company here, -- counsel asks him a question and he has got to hunt up those records. I appreciate that, and moreover, unless the figures are got together and tabulated it is going to be very difficult to get at them when we want to use them, and it is a time, labor and expense saving proposition.

MR. HASKELL. We are perfectly agreeable to the direction of the court.

THE COURT. I rather apprehend that you are al talking around the subject and that is, who is to pay Mr. Trask for his time.

A. That is a question I was going to ask. It is outside of my employment.

THE COURT. Yesterday I urged that there should be some definition of the attitude of plaintiffs and intervenors. You are together on some propositions and not together on some.

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Mr. Haskell ha' asked the witness for work which ought to be done out of court and which, I think, will cost some money.
MR. HASKELL. We will excuse the witness for the present with the understanding that we will recall him later on.
MR. CHAPMAN. Is it with the understanding also that you want to examine him on these things?
MR. HASKELL. With the understanding that we expect to.
MR. CHAPMAN. Then the only thing he can do is to prepare for it by preparing the data outside of court.
MR. BRITT. What is the pending proposition, Mr. Haskell? To withdraw Mr. Trask for the present?
MR. HASKELL. For the present.
THE COURT. And you desire to recall him later on on these data?
MR. HASKELL. Yes, sir.
A. I want to understand this. I am employed here by my clients on certain lines and this work is especially outside and I shall not prepare any work without some arrangement as to payment for it.
THE COURT. I assume that is what Mr. Haskell wants to talk over with you out of court.
A. I don't want it understood that I may be called on two weeks from now when I am in the same position that I am today.

CROSS EXAMINATION.

MR. CHAPMAN. Q. When you measured the waters in this tunnel Division box that you speak of, what waters are included in the measurement?
A. The waters measured at the Tunnel Division Box were any and all waters that were diverted from the flood channel of

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Cucamonga Canyon at a point in the cienega, and those waters would comprise the waters draining from the cienega plus any waters that may have been flowing down the flood channel.

Q. How are those waters brought from the cienega.

MR. BRITT. To what, Judge Chapman?

Q. To the point of measurement.

A. From the cienega the waters that drain into the flood channel.

Q. Does this "Y" tunnel cut any figure in the measurement of the waters or the supplying of the waters measured at the division box?

A. Let me see. I may be a little mixed myself. Please read the first question Judge Chapman asked me.

(First question and answer of C o ss Examination read to the witness.)

A. That answer was wrong. I had in my mind the creek division box instead of the tunnel division box.

Q. At the tunnel division box what waters were measured?

A. The waters measured there are the waters that hav drained into the tunnel,--into the "Y" tunnel-- from the cienega formation penetrated by the "Y" tunnel, plus any waters that have gathered and flown by gravity into the ditch leading from the "Y" tunnel. In other words, at the time the early measurements were made the water was coming in at points below the mouth of the "Y" tunnel in the deep cut of the approach to the tunnel.

Q. Was the water conducted in an open ditch?

A. They were then conducted in a cement pipe line out to the division box.

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Q. Where did the pipe line receive the water?

A. The pipe line received t e water principally from the tunnel.

Q. Did it receive any of the waters except those which came fr m the tunnel.

A. In the later measurements which I made it did not. There was some water in the cienega below the mouth of the "Y" tunnel which flowed down the drainage channel there. A very little.

Q. About how much?

A. I couldn't say, for I didn't measure it. The ground was wet there.

Q. Where did the "Y" tunnel obtain its waters from?

A. The "Y" tunnel obtains its water from the Red Hill formation. The tunnel was started in the cienega itself. It was an extension of an open cut in the cienega.

Q. What cienega was it th t the "Y" tunnel took its water from.

A. The large cienega indicated in part upon plaintiffs' Exhibit 1 by t e peculiar markings for swamp or cienega in and about the "Y" tunnel.

Q. Has that cienega any name?

A. I have heard it called the big cienega and I have heard it classified as the Cucamonga Springs. The whole formation there supplying both the creek division box and the tunnel division box is in one and the same cienega, only in different parts of it.

Q. Have you heard mention made in this case and in the pleadings in it of an east side Spring or Cucamonga Spring?

A. I don't recollect distinctly now. I heard this des-

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ignation of the East side Springs as compared with the West Side Springs, springs which were on the west side of the Red Hill.

Q. Whic, if either of those are you referring to when you are speaking of the "Y" tunnel and the springs or tunnels from which it obtains water?

A. Well, the "Y" tunnel was from the eastern portion of the cienega; I don't know that I ever heard that designated as the East Springs, I may have.

Q. Have you heard that designated as the Cucamonga Springs?

A. Yes; though my understanding was that the Cucamonga Springs covered the whole cienega.

Q. The whole cienega?

A. It is not one spring, it is various and numerous springs.

Q. Which sid ar. they , the east side or west side of the Red Hill.

A They are on the east side of the Red Hill.

Q. When you were measuring the water in the Chinese division box which you have spoken of what waters were you measuring then?

A. I was measuring the waters that were gathered near the central part at a point intermediate between the supply for the creek measuring box and the "Y" tunnel. It was the local drainage at that point which was gathered into trenches.

Q. What was it draining?

A. It was draining the surrounding ground; it was a water logged ground at that time.

Q. Was it deriving any water from any of the cienegas?

A. The output was water from the cienegas or part of the

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cienega.

Q. Was that a part of the cienegas, the Cucamonga Springs that you have been speaking of before, is that included in the term, Cucamonga Springs as you understand?

A. My understanding is that the Cucamonga Springs includes the whole of the east cienegas, east of the Red Hill.

Q. When you weremeasuring the water in the creek division box what were you measuring?

A. I was measuring the waters which weregathered in the central and western part of the big eastern cienega and any other waters which might have been flowing down the wash channel of the Cucamonga Canyon.

Q. These springs which you speak of are they also part of the Cucamonga Springs?

A. Yes, sir; that is my understanding of them.

Q. Are these waters which you measured at the different division boxes of which you have spoken ever collected together in one conduit?

A. Not so far as I know. In so far as my knowledge goes they were separate.

Q. Not at or above the point where you made the measurements?

A. No, the

Q. They were separate?

A. Separate and distinct.

Q. What works of an artificial character were constructed to obtain the water from these cienegas or springs of which you have spoken and bring them into the conduits where you measured them?

A. The conduit leading from the "Y" tunnel, in and about

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that had been a large amount of trenches.

Q. And the "Y" consists of two branches?

A. Yes, sir.

Q. Forming a figure something like a letter "Y"?

A. Yes, sir.

Q. How deep under ground is the upper end of those two branches, how far below the surface do they terminate?

A. I can't give that from memory.

Q. Are they part of or an extension of the trenches or cuts which had been made previously to running the "Y" tunnel?

A. Yes, sir; that "Y" is an extension of the main channel or trench into that cienega.

Q. How is the water conducted from that "Y" and from the two branches to where you made the measurement?

A. Brought in a cement pipe line.

Q. Then below the point of measurement in what direction is it carried and by what means?

A. I had nothing to do with the distribution of the water, but at the division box there was a seggregation of the water into two parts and two pipe lines leading from it.

Q. Is that why that was called the division box?

A. That would be my inference.

Q. You didn't know?

A. I would assume it.

Q. There were two pipes there?

A. Yes, sir.

Q. And the divisions of the waters made at that place in that box?

A. Yes, sir.

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Q. You say you don't know where it went to?

A. Well, in a general way, I know it went into the Cucamonga system, some part of it.

Q. It didn't go to Ontario or Uplands?

A. No, sir.

Q. Nor in that direction?

A. No, sir.

Q. Has the San Antonio Water Company anything to do with making those trenches or that tunnel or conducting the waters therefrom?

A. No, sir.

Q. Did they have anything to do with the waters or the conduits by which the water was taken at this Chinese garden?

MR. BRITT. It is stipulated that it did not.

MR. CHAPMAN. Nor the waters taken at this creek division box. I believe that is the case there.

MR. BRITT. Yes, sir.

MR. CHAPMAN. Q. Of these wells which you speak, 9 in number, if I remember rightly, whereare they located with reference to section 4, township 1 south, 7 west?

A. 1 to 8 inclusive are north of section 4.

Q. And what is the 9th?

A. The 9th would be west or in the western part of section 4

Q. And south of the Base Line?

A. Yes, sir; south of the Base Line.

Q. These others are all north of the Base Line are they not?

A. Yes, sir; the first 8.

Q. Where is the Sixteenth Street well, or where is Sixteenth street on that diagram?

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A. Sixteenth Street on that diagr m or plat is designated Base Line and it is the street on the northern edge of section 4.

Q. Northern edge of section 4?

A. Yes, sir, running east and west.

Q. There was a well that you spoke of as the Rubio well, if I remember the name rightly; where is it?

A. The Rubio well is designated as well number 6 and is nearly north of the center line of section 4.

Q. I believe you stated that according to the memoranda which you had before you that upon one occasion at least 5 of those wells were being pumped at once; how was it generally?

A. The number of wells pumped depeded upon the amount of water required and varied at different times during any one year and varied quite differently at different times during different years. Take the year 1904-- the requirements of the San Antonil Water Company were considerable and for a period of several months I presumed that there would be at nearly all times 5 wells pumping. Some times they shifted from one to the other, that is during the season of 1904.

Q. What was the experience in other years than 1904?

A. In 1905 there were not as many wells pumped.

Q. About how many were pumped?

A. Well, I think for the greater part of the time the pumping went on 3, part of the time 4.

THE COURT. Q. You answered that during 1904 the requirements of the San Antonio Water Company were considerable; were they more at that time than at any other time?

A. Yes, sir, the requrements on this particular source.

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Q. Oh, I didn't understand you.

A. Yes, sir; I was referring to the requorements on this particular source.

MR. CHAPMAN. Q. It has been the custom of that Company to pump waters from these wells to no greater extent than was required to supplement their other supplies and to furnish a supply of water for the uses and lands which they had been accustomed to dispose of that water to? Is that the fact?

A. That is the truth; they simply have drawn to the extent of their needs.

Q. What is the conduit by which the water from these wells is conducted to Ontario and Uplands?

A. They are conducted through a pipe line laid, beginning at about well 8 and running westerly for about a mile and nearly parallel with the line of wells.

Q. Are any of the waters from those wells discharged into a tunnel at all?

A. No, sir.

Q. What are the wells the waters of which are taken through the tunnel.

MR. BRITT. Do you refer to the Edy tunnel?

MR. CHAPMAN. Q. Well I suppose it is the Edy tunnel. There is only one there.

A. There is only one tunnel on the west side of the Red Hill and there are some wells supplying that tunnel. Well number 9 is the northern we l .

Q. There is only one tunnel used by the San Antonio Water Company to conduct w ater from that section towards Ontario, is there?

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A. That is true.

Q. Is that the one that is called the Edy tunnel?

A. That is called the Edy tunnel.

Q. Waters which flow in that tunnel, does any portion of it belong to or claimed by other people than the San Antonio Water Company?

A. Yes, sir.

Q. Who.

MR. BRITT. We object to that as calling for the opinion and conclusion of the witness and not proper cross examination.

MR. CHAPMAN. I am not asking for the opinion of the witness, I am asking for the facts, whether that tunnel is a common conduit for different proprietors of the waters that were conducted through it.

MR. BRITT. I think the objection is well taken. bec use it goes further than the direct examination.

MR. CHAPMAN. I understand Mr. Haskell to insist upon the information that he wants in regard to that Edy tunnel.

THE COURT. It seems to me th t is proper cross examination in regard to what Mr. Haskell asked.

MR. BRITT. Mr, Haskell asked for physical facts and bout the quantity of water flowing from that tunnel.

THE COURT. Judge Chapman is asking for physical facts and not as to the title I take it.

MR. CHAPMAN. Just add to the previous question "and used by other people".

THE COURT. The objection is overruled. Mr. Britt,

MR. BRITT. Exception.

Q. Who are they now? Tell us who it is that is conducting

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water through that tunnel?

A. The Cucamonga Water Company is taking water through that tunnel.

Q. Anyone else or any corporation else?

A. The San Antonio Water Company.

Q. Any others?

A. The Ontario Power Company.

Q. Any other?

A. Not that I know of.

Q. So that the sum total of water that may be found or what you may show in regard to measurements of the water conducted in that tunnel is used by these different persons as a common conduit for taking the waters that they are entitled to there or claimed to be entitled to?

A. Yes, sir.

Q. These other wells of which you have spoken above the Base Line and perhaps one a few feet below, take the waters to Ontario by another route?

A. Entirely separate fro the waters of the tunnel.

RE DIRECT EXAMINATION.

MR. WATERS. Q. This water which the San Antonio Water Company the defendant in this case carries through the Edy tunnel is from what different sources received into the tunnel?

A. The San Antonio Company draws its water fro wells located in land north of what is known as the 90 acre tract; the 90 acre tract is the property of the Cucamonga Water Company, --the tunnel is located throughout its entire length, and the Cucamonga Water Company have and exercise a right to carry any and all water through their 90 acre tract through

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this tunnel up to and not exceeding one half of the capacity of the tunnel; so that the waters of the San Antonio Water Company and drawn from the ground through their wells which are located north of said 90 acre tract.

Q. Please come to the map, Exhibit number 1, and tell me whether well number 14 on this exhibit is one of those wells, the water of which defendant diverts into and through the Edy tunnel, well number 14 of this map?

A. The designation "Well number 14" is of a well which is on land of the Company and from which they are drawing water through this tunnel.

MR. CHAPMAN. What company?

A. Lands-- I don't know whether that belongs to the San Antonio Water Company or the Ontario Power Company, but one of the companies; one of the Ontario Companies, either the San Antonio Water Company o the Ontario Power Company.

MR. WATERS. Q. Do you know whether that well number 14 is claimed by defendant San Antonio Water Company or not?

A. I don't know which Company has the title to it. Whether it is the Ontario Power Company o the San Antonio Water Company.

Q. Irrespective of that fact can you tell us now in what wise that well discharges water and at what level it discharges water into the Edy tunnel, at what level below the surface?

A. I can't give the depth below the surface without the data which I have turned in to the reporter. I had the depth there.

Q. That is one of the wells which is given explicitly there?

A. Yes, sir.

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Q. What Company has been using the water from that well in the past?

A. The San Antonio Water Company and the Ontario Power Companies each have interests there. Whoever owns the well has been using the water.

Q. Does the Ontario Power Company use water for irrigating purposes or is it only for power purposes?

A. The Ontario Power Company owns water and leases the water and disposes of it to the San Antonio Water company, and it is used directly or indirectly by the San Antonio Water Company for the benefit of its stockholders.

THE COURT. You have spoken of the paper which was given to the reporter for transcription into the record having data in regard to a certain well referred to, in answer to Mr. Waters' question; as I understand that is one of the wells as to which the paper is not offered in evidence. Is that correct?

A. That is correct.

MR. WATERS. The understanding that I had, as expressed by Mr. Britt, was that such portions of that statement as might be wished to be offered might be offered.

THE COURT. I thought perhaps you thought that it was already in evidence. I don't understand that it is.

MR. WATERS. No, sir; I don't understand that it is. I merely understand that it is available to us.

MR. WATERS. Q. Do you know in what proportions or quantities each of those interests which you say have used the water coming out of the Edy tunnel, that those waters have been used by those different companies in what proportions or

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shares or inches, each of the companies have used it?

A. Well, I can state that to you in general terms.

A. Well, that is the only way I want it.

A. In general terms the Cucamonga Water Company has taken about one third of the total output of the tunnel, the other two thirds going to Ontario, and I have no data as to the division of the Ontario water between the two different companies owning it.

--o--

J. C. SOMMER

J. C. SOMMER, a witness called by plaintiff, being first duly sworn, testified as follows:-

DIRECT EXAMINATION.

MR. BRITT. Q. Where do you reside now?

A. At the foothills north of Cucamonga.

Q. Three miles north you say?

A., 4.

Q. Do you know the Cucamonga Vineyard, the property of the Cucamonga Vineyard Company and the Cucamonga Land and Irrigation Company?

A. Yes, sir.

Q. Did you live on that property a number of years?

A. Yes, sir.

Q. Beginning at what time?

A. 1882, December, 1882.

Q. And thence until what time?

A. The end of July 1903.

Q. What was your business there?

A. Superintendent.

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Q. What did you superintend?
A. The cultivation of the vineyard and making wine.
Q. You are a native of Germany?
A. Yes, sir.
Q. You understand the care and management of vineyards do you
A. Yes, sir.
Q. You learned that business in Germany in the first place before you came to America?
A. Partia ly in Germany and partially in America.
Q. What is your age at present?
A. 58
Q. Before you went to the Cucamonga Vineyard and became superintendent there had you been engaged in the care of veinayards before that time?
A. Yes, sir.
Q. In this country as well s in Germany?
A. Yes, sir.
Q. You know where the win ry is situated?
A. Yes, sir.
Q. During the time that you lived on the place where was your house, the house that you occupied?
A. Right close to the winery.
Q. You know the creek that runs down close to the winery coming down in a northwesterly direction?
A. Yes, sir.
Q. In 1883 did you witness any measurement of the waters of that Creek?
A. Yes, sir.
Q. Where was the measurement made?

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A. About 200 feet west of the old brick hotel.

Q. That brick hotel is up no th of the winery a few hundred feet isn't it?

A. Yes, sir, nearly a quarter of a mile.

Q. How was the water at that time that you saw measured there taken out of the creek?

A. In an open ditch.

Q. Where was it brought to then for the purpose of measuring it?

A. To that point about 150 feet west of that brick hotel.

Q. What was it turned into there, anything?

A. Into a wooden flume used for a measuring box.

Q. How long was the open ditch in which the water was brought from the creek to the wooden flume?

A. About 300 feet or less th n 300 feet.

Q. You may describe what you saw of this measurement?

A. The settlers of Cucamonga, that is what we call the old settlers, the old settlers of Cucamonga each owned half of the water flowing from the creek, about half of the water and the old settlers requested me to witness the measuring so I attended. I ~~xxxhxx~~ myself had no experience in measuring water.

Q. That is what I supposed and I want you to describe what you saw of the measuring.

A. The north branch of the measuring box after the water was divided the water wa s conducted to settlers, the north branch of the division after the division was made, and that division box , it was about 18 inches wide; in that division box they inserted a four inch board to bring the water under

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what is called a four inch pressure and they brought the water to about a four inch flow underneath the board; a little a trifle more than four inches below the board and the bottom of the flume.

Q. How wide was the opening through which the water flowed beneath this board?

A. How wide between the sides?

Q. Yes, sir.

A. 18 inches.

Q. How many such openings were there, 1 or 2?

A. Just 1.

Q. Two of the same width?

A. There was just one. There was only one side measured, only the settlers measured their side. I was satisfied that the other side for the vineyard was the same size, so I had no objection to make about the measurement .

Q. Then you say half of it was going down under the board and the other half was going down the other branch where there was no board?

A. Yes, sir.

Q. Now the half in which the board was inserted you say was 18 inches wide and four inches high?

A. Yes, sir.

Q. That is the opening?

A. Yes, sir; the opening was four inches wide.

Q. How high was the board, what was the width of the board under which the waterpoured?

A. 4 inches.

Q. How high was the surface of the water above the middle

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of the p essure, the opening through which the water flowed?
A. The water just reached to the top of the board so it didn't flow over.
Q. Well, then, that made six inches?
A. That is what you would call it now; in those times I didn't know any better.
Q. It was six inches from the top of the board to the middle of the aperture through which the water flowed?
A. Yes, sir.
Q. Do you remember the purpose for which this measurement was made?
A. Why, I believe to the satisfaction of the settlers to know how much water they were getting.
Q. Were they aiming to divide it into two parts there, two equal parts?
A. Yes, sir; the water was divided before it was measured; after it was in one division then they measured it.
Q. They measured but one division?
A. Yes, sir.
Q. How many persons assisted in that measurement?
A. About six besides myself.
Q. Well, did you observe whether the two parts into which the water was divided were equal or not?
A. Just as equal as could be made in a rude way.
Q. How did they divide it into two parts?
A. From the open ditch the water was run on to a flume, each forming a division, and the branches; then each branch was eighteen inches wide.
Q. How were the two branches made?

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A. The board ran into a narrow Y, a very narrow Y.
Q. Better show the Court up on top of the desk.
A. Something similar to this.
Q. Those outside lines represent the sides of the flume?
A. Yes, sir.
Q. And that V was put right in the middle?
A. Yes, sir; it came to a sharp point.
Q. It came to a sharp point and divided the stream?
A. Yes, sir.
MR. BRITT, Q. At the time that you went there had there been any Y tunnel constructed in the cienga further north?
A. No, sir; there was no development whatever.
Q. No development at all?
A. No, sir.
Q. Do you remember when the Y tunnel was constructed?
A. About.
Q. What year was it begun?
A. I believe in 1886.
Q. When was it finished?
A. It seems to me in 1888.
Q. In what year?
A. I think it was '88; '87 or '88. I never paid much attention to it; I had practically nothing to do with it, excepting to receive the water and use it. I received half of the water and used it.
Q. You did receive half of the water when it was constructed?
A. Yes, sir.
Q. What did you receive the water into from the Y tunnel?
A. The water was conducted in a cement pipe, into a division

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box, where the water was divided.
Q. At the division box what was done with it?
A. One half of the water was led off in an easterly direction, and the other in a southerly direction, in cement pipes.
Q. And you got half of it?
A. Yes, sir.
Q. Who got the water that flowed in a southerly direction?
A. The Vineyard Company.
Q. You did?
A. Yes, sir.
Q. What did you do with it?
A. Irrigate the vineyard and alfalfa, corn, grain, whatever needed it most around the ranch.
Q. This water that was divided at the division box, known as the creek division box, did you get any part of that for use by the Cucamonga Vineyard people?
A. Yes, sir.
Q. How much?
A. One half.
Q. What did you do with that?
A. It was used the same way; all those waters were run in a reservoir, and from there the water was used for irrigating.
Q. State whether you used it for irrigation on the Cucamonga Vineyard?
A. Yes, sir.
Q. How is the Cucamonga Vineyard situated with reference to the reservoir that you mentioned, which direction?
A. It is about due south, a little to the southeast.
Q. State whether that vineyard was in existence when you went

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to the place in 1882?

A. Part of it.

Q. How much?

A. About 150 acres.

Q. Do you know whether it was an old vineyard at that time?

A. Some of the vines were over 60 years old.

Q. Did you plant out any new vineyard after you went there?

A. I believe about 175 acres.

Q. You planted some alfalfa also?

A. Yes, sir.

Q. How much alfalfa?

A. About 50 acres. Just as the water was developed I put out more alfalfa.

Q. Did you plant any corn?

A. Yes, sir.

Q. How much corn did you raise?

A. About 20 acres in a season.

Q. State whether you used the water from the Y tunnel, the ha f of it, and the water from the creek, the half of it, on the lands below the winery, and the neighborhood of the winery, indiscriminately,- you used all the water together?

A. All the water was used together.

Q. State whether you used it all?

A. Yes, sir; as near as could be used during the irrigating season.

Q. Do you know anything about some water that was used by some Chinese, between the Y tunnel and the creek?

A. Yes, sir.

Q. Was that in use when you went on to the place in 1882?

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A. No, sir; it was not; the Y tunnel was not in existence then.
Q. How long after you went there, before that water begun to be used by the Chinese tenants or renters?
A. I don't remember the year but I believe it was in 1896.
Q. 1896?
A. '95 or '96. when they began to cultivate some of the land.
Q. How many Chinamen were there cultivating the land at that time?
A. I couldn't tell how many; probably about 12 or 16.
Q. What use did they make of the land?
A. Raising vegetables.
Q. About how many acres did they cultivate to vegetables?
A. About sixty.
Q. About sixty cres?
A. Yes, sir.
Q. State generally what crops of vegetables they grew there?
A. All kinds of market truck.
Q. Can you mention some of the kinds?
A. Beets, cabbage, turnips, and corn, putatoes, lettuce, radish, tomatoes, and all such.
Q. Did they irrigate the vegetable gardens?
A. Yes, sir.
Q. Where did they get the water to irrigate?
A. It was taken from the Y tunnel, from the waters of the Y tunnel.
Q. Entirely?
A. No, sir; they only got part.
Q. Where did they get the balance from?
A. For a while they thought they had sufficient water; I

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don't know if they increased their acreage, what he had rented from Mr. Childs, or how it was, but anyway they wanted more water, so Mr. Childs gave them permission to bore a well at their own expense and operate it at their own expense; and they operated it, up and down, when it wasn't broke down, but it was mostly broke down.

Q. What Mr. Childs was that? O. W Childs?

A. O. W Yes, sir.

Q. When you first went on the place, about how far up the channel there, up towards the Base line - You know what the Base Line road is?

A. Yes, sir.

Q. About how far up the channel of the creek did the water rise, below the base Line? How far from the Base Line to where the water appeared in the channel of the creek?

A. About 300 feet.

Q. That is the water rose southerly from the Base Line about three hundred feet?

A. Yes, sir; in the creek-bed.

Q. What was the nature of the creek bed there? Was it rocky?

A. Yes, sir; boulders, nearly all boulders, very little sand. boulders and gravel.

Q. Did you ever observe any fish in the creek?

A. There have always been fish in it, until the water got so low they couldn't live in it.

Q. You fished in it did you?

A. Yes, sir; I fished in it; I never took time to fish, but the fish came down through the pipe line.

Q. Into the reservoir?

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A. Into the reservoir and sometimes out into the field.

Q. What sort of fish were they?

A. Trout; brook trout.

Q. Did you see any person other than yourself fishing in the creek?

A. I never watched anybody; my children have went out a number of times and brought in some fish.

Q. Now, in those times when you irrigated the vineyard, about what quantity of product, what quantity of crops, did you obtain from the vineyard per acre?

A. Well, the average crop while we were irrigating was about from four to five tons to the acre.

Q. Were the grapes worked up on the place at the winery?

A. Cultivated do you mean?

Q. Were the grapes made into wine on the place?

A. Yes, sir.

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Q. What did you call the place where you manufactured the grapes into wine? Was it a winery?

A. Yes, sir; it was a winery.

Q. Did it have a distinctive name? Was it known as the Cucamonga Winery?

A. Yes, sir.

Q. Did you superintend the manufacture of wines from the grapes?

A. Yes, sir.

Q. That was your business?

A. Yes, sir.

Q. You witnessed the construction of the "Y" tunnel--

A. No, sir; I never paid much attention to the "Y" tunnel. I had nothing to do with it or with the construction of it.

Q. You knew when the "Y" tunnel was constructed?

A. Yes, sir; about the time.

Q. Did you see any ditches driven about that time into the cienega?

A. Yes, sir; into the sides of the cienegas.

Q. What did you notice as to the dryness or wetness of the cienega after the "Y" tunnel was constructed and those ditches had been put in that you have mentioned?

A. The upper water in the cienegas was dried up-- to the north- but not to the south. The south part of the cienegas was lower ground than the north part.

Q. Was there any effect on that lower part? Did it remain marshy?

A. It remained marshy. Apparently it had but very little if any effect.

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Q. You removed from the place in the summer of 1903?

A. Yes, sir.

Q. Before you left the place in 1903 did you notice anything about the condition of the cienegas or the water in the creek?

A. There was hardly any water left in the cienegas. I didn't examine it, but no water was flowing from it.

Q. Was there any water flowing from the "Y" tunnel?

A. No, sir.

Q. How about the water of the creek?

A. It went down to about 15 or 20 inches-- the whole flow.

Q. How about the water at the China garden?

A. The Chinamen had to give up. When the ~~tunnel~~ water gave out it shut off their principal supply, and they had so many breakdowns with their well they couldn't stand the expense of pumping.

Q. What became of the cienega?

A. It seemed to dry up.

Q. All of it?

A. I believe by now they are all dry.

Q. Did you plant an orange orchard close to the winery?

A. Yes, sir.

Q. How many acres?

A. Nearly five acres, I put out, besides those old trees that had been planted before.

Q. Do you know in what year you planted that orange orchard ?

A. 1900.

Q. What became of the trees?

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A. Most all are dead or dying.

Q. Did you notice any decline in the productiveness of the vineyard before you removed from there?

A. Yes, sir.

Q. How much did the crop fall off per acre?

A. Fully two thirds, excepting in the last season we had a very wet season and then it came up to normal again.

Q. That was the season of 1902-3?

A. 1902-3.

Q. Besides the ~~quantity~~ quantity, did you notice anything as to the quality of the grapes previous to 1902 and '3 for the next two or three years?

A. Yes, sir; the quality when we had a shortage of water was very inferior. Thick skinned, large seeds and with very little juice.

Q. About what was the crop per acre of grapes of that quality during the years 1901 and '2?

A. On an average about a ton and a half.

Q. How abut your alfalfa? What became of that?

A. We had to let it dry up.

Q. Why?

A. We had no water to irrigate with.

Q: What year did the alfalfa dry up?

A. Already in 1900 I had to give up the alfalfa. Part of it I had to give up before that time already.

Q. Did you notic in the creek whether the water appeared further down below the Base Line than it had previously--before you removed from the place?

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A. As the water went down-- as the flood water went down, naturally the creek flows to wards the south, and the more the water sunk away the further south the water was noticed.

Q. After it disappeared from the upper part?

A. Yes, sir.

Q. Q. Do you know in the seasons when there was enough rain fall in the mountains and water came down the chan el of Cucamonga Canyon out into the Cucamonga plain, whether any of the flood water in the winter time flowed down that channel past the winery?

A. Yes, sir.

Q. Your present residence is where with reference to the mouth of the Cucamonga Canyon?

A. A little east; about a mile and a half east of Cucamonga Canyon.

Q. The mouth of the canyon at the foot of the mountains?

A. Yes, sir.

Q. Did you sink any wells or did you see any wells sunk on the lands of the Cucamonga Vineyard Company below the winery about 1900 or 1901?

A. No, sir.

Q. Did you see any wells sunk by any other person down below the winery some distance out on the plain?

A. No, sir; but I seen some sunk a little west of the winery-- a little to the northwest. There was a hole sunk about 200 foot deep.

Q. In what dirction from the winery?

A. A little to the northwest.

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Q. Where? Up on the red hill.

A. A little below the bridge.

Q. Wouldn't that be southwest from the winery?

A. It would be southwest from the bridge and northwest from the winery.

Q. Was it on the red hill or ~~xx~~ ~~xxx~~ in the valley below?

A. It was ~~xx~~ near the creek wash or creek bed.

Q. Was it below the San Bernardino road or above?

A. Just a little bit below.

Q. How deep did they go?

A. About 200 feet.

Q. What year was that sunk?

A. I don't recollect, but it seems to me about 1900. I don't recollect the year.

Q. About how long was it before you removed from your place?

A. Some three years.

Q. Do you know on whose land that well was sunk?

A. It had been originally the Riche property.

Q. A little piece of about two acres?

A. About 3-3/4, I think.

Q. Who sunk the well?

A. Some Los Angeles parties.

Q. Did they get any water?

A. They got a little.

Q. How much?

A. Sometimes they pumped as high as six inches for a while. While they were working they had water, and when they stopped working the water would sink away.

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Q. What became of the well?

A. I believe it is still open.

Q. Is it used for any purpose?

A. No, sir; it is dry, so far as I know.

Q. Did you ever see it dry? Did you observe yourself whether it was dry?

A. Yes, sir.

Q. In what years?

A. It dried up about 1900, shortly after they stopped work. There was no water in it, but naturally the ground was soft or moist.

Q. How is that well situated with reference to the Cucamonga vineyard? Is it in the vineyard?

A. Practically it is within the Vineyard Company's property. They have property all around it.

Q. Does the Cucamonga Vineyard itself lie all around that tract?

A. The Cucamonga Vineyard Company's property.

Q. Is tht the only well that you know of below the winery that was sunk in recent years?

A. Yes, sir.

Q. Was that a bored well or a dug well?

A. A dug well.

Q. Do you know about what the size of it was?

A. I believe 4 by 4.

Q. Along in the last year or two you were on the place did you notice any dying out of the vines or vineyard?

A. Yes, sir.

Q. To what extent?

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A. Not a large extent. I lost probably about five per cent. each year from 1900 on.

Q. State what means you took in order to keep the vineyard alive beyond what you have done before while you had water to irrigate?

A. I cultivated it as much as possible; plowed and cultivated as much as possible in order to keep the ground moist. That is, as far as it could be done by cultivation.

Q. Did you cultivate it any more than you did before the water failed?

A. A little more; probably one extra cultivation.

Q. Possibly I have asked you the question before,, but state whether you used when you had the water on the Vineyard Company's property and the property of the Cucamonga Land and Irrigation Company, all the one-half of the water which was the output of the "Y" tunnel and the creek?

A. Nearly all, excepting a few seasons when I rented out a little water to the Fruit Land Company one season, and to a party that was raising potatoes another season. But it was just a small amount.

Q. With the exception of those two seasons where did you use all that water during the irrigating season during the year you were there?

A. On the vineyard, alfalfa, corn, and one season I irrigated grain, and I believe it was 1898 or '99, I am not sure, but it was when we had the smallest rainfall; during that time.

Q. After the water failed there did you notice any effect in the growth of the trees or brush along in the creek bed or wash?

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Above the winery and between the winery and Base Line?

A. As the wter sunk away at the creek bed some of the black alders or nearly all died off.

Mr. Chapman: Q. Did you say what year that was?

A. They began to die ff after 1900.

Mr. BRITT: Q. Before the cienega d ied up did you notice anything about the flow of water from the cienega-- what became of it in its natural state before it was interfered with in any way? Did an y water run out of the cienega?

A. It all ran i to this creek bed.

Q. After the cienega water had been ta'en below the "Y" tunnel, or, rather, the cienega above the "Y" tunnel had been drained into the tunnel and the ditches there, do you know whether any water in the south part of the cienega continued to drain i to the creek?

A. The very lowest springs.

Cross Examination.

Mr. Chapman. Mr. Summers, you say ~~after~~ the "Y" tunnel was commenced in 1886?

A. I believe it was done about that time.

Q. And completed about the year 1888?

A. Yes, sir; I never paid much attention to it. I had nothing to do with it more than to receive one half of the water and use it.

Q. That is the best of your recollection?

A. Yes, sir.

Q. Do you know the purpose for which it was constructed?

A. The Cucamonga Fruit Land Company developed water for their lands.

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Q. Where were those lands for which the water was developed?

A. Mostly to the east and southeast of the "Y" tunnel, and some of it south.

Q. About what was the area of this swampy or springy cienega land that you spoke of and in which this "Y" tunnel was constructed?

A. I never had it surveyed. It was in spots.

Q. Did you ever make an estimate of how much it contained?

A. No, sir; I never tried to.

Q. You say after this "Y" tunnel was constructed the upper part of it was dried up, but you think the lower part was not much affected by it?

A. Anything above the level of the bottom of the "Y" tunnel was drained, while the ground below it didn't seem to be affected by it.

Q. Can you tell us what area it was that was dried up? How many acres?

A. No, sir; I never tried to estimate.

Q. When did you observe the fact that it had been dried up?

A. I never paid close attention to it.

Q. At what time are you speaking when you say the lower parts were not much affected? What years did you have in your mind when you made those observations?

A. At the beginning; the first few years after the "Y" tunnel was constructed.

Q. That would take us down to about 1890?

A. I couldn't say.

Q. From what you have stated-- to the best of your recol-

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loction?

A. I couldn't guess.

Q. Did you pay any attention to the seasons with respect to the rainfall from the time you were there till the time you left?

A. I kept a rain gauge, but by some mistake or accident the record was burned up.

Q. Did you keep that record from the time you first went there?

A. No, sir.

Q. When did you commence it?

A. About '90.

Q. You know as a matter of fact that there is and has been ever since you have known that country a great difference in the amount of rainfll in different seasons?

A. Yes, sir.

Q. Do you remember that the year '84 was a season of floods?

A. Yes, sir.

Q. And '86?

A. Yes, sir.

Q. And '89?

A. I believe so.

Q. Do you remember also that there was considerable rain in the year 1891?

A. That I don't remember.

Q. Do you remember that from 1891 to 1895 there was very much less ~~kind~~ rainfall than there had been for four or five or six years prior to tat time?

A. I don't remember. I kept a record of it, but I forget

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about it.

Q. After 1895 or '6 do you know that there was but very little rainfall from that time until the last two years?

Mr. Britt: I know how these questions strike the ordinary lay witness, but it is not cross examination. I didn't ask anything about rainfall, and I object to it on that ground.

The Court: I think it is proper cross examination to show that the cause of the shortage is attributable to some other condition.

A. I believe there was more or less rain, especially one dry season, when we had at Cucamonga about 11 inches of rain. I believe it was-- well, I don't remember the year, but I know there was a trifle over 11 inches of rain one season.

Q. Have you paid any attention to any other section of country or any other streams in the vicinity of Cucamonga to know whether or not they had been affected from any cause and there had been a diminution of the waters of the stream?

Mr. Britt: Objected to. We haven't called for from the witness any explanation of the phenomena. We merely asked about physical facts and observations.

The Court: I think the objection should be sustained. Defendant excepts.

Q. You say that you had charge of the vineyards or experience in raising vines and in the vineyard business generally in Germany?

A. Not so much in Germany as in the United States. That is, in Southern California.

Q. Did you irrigate vineyards in Germany?

A. No, sir.

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Q. When you first came to California and got onto this ranch did you irrigate the Cucamonga Vineyard then?

A. I had men to do it, but it was done under my supervision.

Q. You caused it to be irrigated?

A. Yes, sir.

Q. How long did you continue that?

A. Until the water gave out.

Q. About when was that?

A. About 1901 it got so low that we could only use it on the young vineyards. The old vineyards we let go. As the water fell off I had to slack up irrigating.

Q. Prior to 1901 had there been a scarcity of water for the purposes of irrigation?

A. I don't recollect; I had measurements taken--

The Court: Q. Since 1900 there has been a large acreage of vineyard put out to the southward of your place, has there not?

A. Southeast.

Q. Isn't some of it right south of you?

A. Yes, sir; there is some south.

Q. Most of it is east?

A. Southeast.

Q. Extending clear across the Southern Pacific track?

A. Yes, sir.

Q. Have they used water for irrigating there?

A. No, sir.

Q. There is a good deal of water seeping down near the surface?

A. That is a different soil altogether from the Vineyard Company's ground.

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Q. They have no water at all?

A. They have no water whatever.

Mr. Chapman: Q. Are you acquainted with the tract of about 3000 acres laying across the Salt Lake railroad, of vineyards that have been planted in recent years?

A. I have been there once since it was planted.

Q. Did they have any water there for irrigation?

A. Yes, sir.

Q. Where did they get it?

A. They pumped it.

Q. When did you first observe that the alfalfa fields were drying out for want of water?

A. I don't recollect the year.

Q. You say that about 1900 they had dried up, or 1901? Didn't you so testify?

A. About. My memory is poor for remembering dates. But the trees perished entirely.

Q. Had you observed for several years that they were becoming less and less productive?

A. You mean the alfalfa?

Q. The alfalfa.

A. I didn't observe so closely as that. I sent my men out to work and they reported to me whenever there was anything.

Q. You were the superintendent there, were you not?

A. Yes, sir.

Q. Didn't you observe how the alfalfa fields were flourishing from year to year?

A. When we had plenty of water they were flourishing, naturally.

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Q. When did you first observe that for the want of water they had begun to fail?

A. I can't remember the time or the year. Whenever we had plenty of water we could keep the alfalfa in nice growing condition, and when it slacked up the alfalfa was the first to suffer, and the vineyard came next.

Q. The alfalfa field didn't begin to dry up and perish in a year?

A. No, sir.

Q. There were several years of gradual drying out before they finally died?

A. I couldn't pay such close attention to alfalfa. I had other things to attend to.

Q. How was it with your orange trees? Are they still living?

A. Some of them, but very few. They are about all dying.

Q. Are they dead any of them?

A. Most of them.

Q. How many acres are there left?

A. I don't know; I haven't paid no attention to that place for the last three years.

Q. What place did you pay attention to?

A. To my own. Since I left I paid attention to my own and nothing else.

Q. I am speaking of before you left, while you were still in charge of the Cucamonga Vineyard Co's property. What particular property did you pay attention to?

A. The Vineyard Company property, as much as it could be done with irrigation and cultivation.

Q. But didn't pay any attention to the condition in which

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the--

A. Certainly I did; that is what I was there for.

Q. And you can't tell us approximately ?

A. No, sir; I don't try to remember. I don't want to state facts which I can't prove.

Q. Where was that well located of which you spoke in your direct examination?

A. What well?

Q. Bored by the Los Angeles people.

A. About 150 feet or less than 150 feet south of the ditch or southeast of the ditch.

Q. Do you remember when that well was bored?

A. I don't recollect the year.

Q. Can you approximate it?

A. I don't try to.

Q. Can you tell within five years when it was bored?

A. I believe so; about 1900.

Q. Had the alfalfa fields dried up before that well was bored?

A. I believe about that time; I am not sure.

Q. Do you know what the condition of that Cucamonga Vineyard is now?

A. I have n't paid no attention to it. It seemsthat it has picked up a little this last season.

Q. You have seen it this l st season?

A. I passed there.

Q. Wasn't it in pretty good condition then?

A. Not two years ago.

Q. Is it this season?

A. It seems to be better.

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Re-Direct Examination.

Mr. Britt. Q. Were there any families besides your own living on the place before you went away, during the time you were superintendent?

A. Before I went away, yes, sir.

Q. Were there any families living at the brick hotel above the winery?

A. Yes, sir.

Q. Where did those families obtain their supply for domestic use-- their supply of water?

A. From this creek; and when the "Y" tunnel was built-- from the tunnel. And they could use the water from the ditch.

Q. At what time in the year was that measurement made in '83 that you witnessed soon after you went to the place?

A. June or July. I am not sure of the month.

Mr. Joliffe: Q. Do you know who those parties were that sunk the well that you spoke of south of the road?

A. No; they were Los Angeles parties.

Q. You don't know their names?

A. Mr. Crandall was interested in it.

Q. Do you know of any others?

A. I forget their names.

Q. How many were there altogether?

A. I believe there were three interested parties.

Q. Do you know the circumstance or the time the San Antonio Water Company bought some water of Mr. Stowell?

A. No; I never paid any attention to those matters.

Q. Do you know the time when the San Antonio Water Company laid a pipe extending from the west side of the red hill over

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west?

A. I don't remember tht time. I seen it donn. That is, I saw them making excavations and laying the pipe.

Q. But you remember tht they did lay that pipe?

A. I seen it done.

Q. Wasn't it the same year that they were laying the pipe that these fellows were working in the well?

A. It is possible, but I con't remember.

Q. You think it wasn't?

A. It is possible, but I don't remember.

-o-

T. G. GRAHAM.

T. G. GRAHAM, a witness produced by plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

Mr. Britt: Q. Where do you live now?

A. I live in Pasadena.

Q. Did you formerly live at the Cucamonga Vineyard?

A. Yes, sir; at Cucamonga; not at the vineyard.

Q. A little below there?

A. East of the vineyard.

Q. What years?

A. I went there in '86.

Q. And you lived there till when??

A. I left there in 1901.

Q. You were zanjero for the Cucamonga Fruit Land Company, were you not, or superintendent?

A. Yes, sir.

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Q. You know where the Cucamonga vineyard is?

A. Yes, sir.

Q. How far, during those fifteen years, did you live from the vineyard?

A. I was within about three miles of it all those years.

Q. During those times were you familiar with or acquainted with the water manifestations in the creek flowing from the Cucamonga Springs and Cienega to the east of the red hill?

A. Part of the time. I was familiar with it during the time I was superintendent of the Water Company.

Q. Were you out on the place there about the winery and the creek and about those cienegas and the Y tunnel?

A. I was there very day for a while.

Q. For what purpose?

A. Superintending the work part of the time and looking after the water part of the time.

Q. Did you have anything to do w th the co struction of the "Y" tunnel?

A. Nothing in particular. That is, I didn't have the contract. I measured up the tunnel and turned the reports in to the Company when the payments were due. That was about the extent of my business.

Q. In those days did you notice anything of the nature of that creek as to fish?

A. I don't think it was considered much of a fishing resort. There was trout in there and once in a while you would see a boy there fishing.

Q. Where did you see any fishing going on?

A. Yes, sir; there was fish in there, and some in the reser-

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voir.

Q. I want to know whether there were fish in the creek that people went there and caught.

A. Yes; there were fish in the creek.

Q. What do you know about the continuous flow of that creek during the time that you observed it the fifteen years? Did it flow during wet seasons and during dry seasons and during the summer time?

A. Yes; there was a continuous flow of water there from one year to another as long as I had charge of the Water Company, and up to about 1900, I think.

Q. Did you have charge of the water distribution of the Cucamonga Water Company?

A. Yes, sir.

Q. Where did you get the water for the Cucamonga Water Co.?

A. Part of it out of the "Y" tunnel and part out of the creek and part of it out of the Edy tunnel on the west side of the hill.

Q. You didn't get any water for the Cucamonga Water Company out of the China cienega, did you?

A. I don't think we got very much; some times a little. I think at one time that little cienega flowed 15 inches or something like that.

Q. Did you get any of it then into the pipe of the Cucamonga Water Company?

A. It ran down in the main creek and was divided with the creek water.

Q. Did you notice what became of the water of the cienega along in 1886 and '7 and for a number of years afterwards?

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A. What became of it?

Q. Yes. was it drained by anything, and, if so, into what?

A. A. The Cucamonga Fruit Land Company put some open ditches there and developed the cienegas and carried it down into a pipe line and distributed it through the colony for irrigation and domestic purposes.

Q. How much? All, or half?

A. Of course, they used their half. Half went to the Cucamonga Vineyard Co. It ran over a weir and divided after it came out of the cienega.

Q. Where was the division weir of that water?

A. It was about 600 feet southeast of the cienega.

Q. Where with reference to the brick hotel?

A. Well, it was north of the brick hotel, and a little bit east.

Q. Do you know anything of a reservoir on the place used by the Cucamonga Vineyard Company?

A. Yes; the reservoir south and a little bit east of the hotel; and the Vineyard Company's water was turned over the weir and their part ran into this reservoir, and there it was distributed.

Q. Where was that reservoir with reference to the winery?

A. North of the winery about 500 feet I should think.

Q. Between the winery and the brick hotel?

A. Yes, sir.

Q. You left there, I understood you to say, in 1901?

A. Yes, sir.

Q. What time of the year?

A. In the fall of the year; in November.

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Q. What if any change had occurred up to that time in the quantity of water flowing in the creek and the quantity of water flowing from the "Y" tunnel?

A. The "Y" tunnel was practically dired up and the creek was down to about 15 inches. I think it was about 15 inches.

Q. What use did you observe, if any, to have been made by the Cucamonga Vineyard Company of the water which was received first in the reservoir that you have mentioned?

A. They used it on the property there for irrigating vineyard and alfalfa and trees-- orange trees and walnuts.

Q. Do you know whether they used all of their half of the water?

A. Yes, sir; they used it all.

Q. For what purpose?

A. Irrigation.

Q. Was there any used for domestic purposes, ~~xxxxxxx~~by the people who lived at the winery?

A. Yes, sir; there was a few families there. I think most of the people that worked on the property had their domestic water furnished.

Q. Did you notice anything of the use of the water at the China garden above the hotel?

A. I know that they had a China garden there. And one time they had a stream flowing from the cienega, and that finally dried up and they put in a well, and the last time that I remember of they were pumping that well with a small gasoline pump.

Q. Do you know what year that was?

A. I think they started to pump there in 1899, if I am not

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mistaken.

Q. Before you left there did you notice anything of the condition of the trees and alders or willows or other growth along in the channel of the creek above the winery and above the brick hotel?

A. I noticed a great lot of alders had died, and were being cut up for firewood.

Q. Did you notice whether any willows died?

A. I didn't notice any willows particularly, but I noticed the black alders were about all dead.

Q. State what amount of black alder growth was in there before the time mentioned?

A. I should think the creek was half a mile long there-- the water channel-- and it is lined with alders on both sides all the way up to within 200 feet of the base line.

Q. How much of that died?

A. I think there was two thirds of the trees dead.

Q. Did you notice any tules growing on the lands in the neighborhood of that creek-- east of the creek-- in '86 and afterwards?

A. Yes, sir.

Q. What became of that tule?

A. The tule all died.

Q. Did you make any observations on the flow of the water in the creek after 1901?

A. Not since 1901.

Mr. Waters:

Q. During this time covered by your testimony did you have anything to do with the distribution of the other half of the water?

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A. Which? Aside from the vineyard water?

Q. Yes, sir; aside from the vineyard water; the other half of it.

A. I distributed the water to the different stockholders.

Q. Did you have anything to do with the water right of 34.84 inches, called the Old Settlers' water right?

A. I had control of that water till it reached a certain division box, where they accepted it, and I turned it through the weir to them and they had charge of it from that on.

Q. At what division box was that? Where was the place?

A. I can point it out to you on that map.

Q. It was just below the hotel?

A. It was about half a mile due east of the brick hotel on the next avenue which was Hellman Avenue.

Q. And what was that division box called? Was it called anything?

A. Well, it was a point where the old settlers received their water through a partyxxxbox pipe line. I believe they were both owners that far, and from there on they had their own individual pipe.

Q. What was the first time that you were familiar with that?

A. From the time the box was built up to the time I left the company's employ in '94.

Q. When was the box built?

A. The box was built in '86, if I remember right; in the fall of '86.

Q. What quantity of water was allowed to flow into the Old Settlers' pipe line?

A. 33.8 inches, I think there was, if I remember right.

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Q. That was a continuous stream?
A. Yes, sir.
Q. From what supply did that water come?
A. It came from the creek.
Q. That was the creek water?
A. Yes, sir.
Q. What creek?
A. Cucamonga creek
Q. The one formed by these springs that you have referred to?
A. Yes, sir.
Q. It didn't come through the "Y"ntunnel?
A. No, sir.
Q. And this was allowed to flow there continuously, was it?
A. Yes, sir.
Q. Was the box so arranged as that that water flowed automatically all the while that stated quantity?
A. Yes, sir.
Q. And if there was any fluctuation in the conduit or stream did this quantity fluctuate or the other part fluctuate?
A. The other part.
Q. Then there was an overflow?
A. There was an overflow where it kept the four-inch pressure and their part all the same. Of course, it varied a very little, but it was supposed to be kept at a certain hight all the time.
Q. In other words, the gate was so arranged as that 33.84 inches or their quota , whatever it was, flowed down into their pipe?
A. Yes, sir.

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Q. And from there on they managed it to suit themselves as between themselves?

A. Yes, sir.

Q. You say that began in the fall of 1886?

A. I think it was in the fall of '86 the pipe line was made and the box put in.

Q. And it continued up to what time within your knowledge?

A. '94 is when I quit the company.

Q. Has you been conversant with it since then?

A. Well, yes; to a certain extent; up to the time that I moved away from the colony.

Q. When did you move away from the colony?

A. 1901.

Q. How was it from '94 down to 1901 with respect to their getting their water in that wise, if you know?

A. About '89 the water fell off so that they didn't get it.

Q. '89?

A. '99 It fell off so that they d dn't get their full measure and from that on it decreased until I heard that they had about 15 inches.

Q. From the time that the measuring box was made in the fall of '86 down to the time when that half of the stream got to be less than their quantity--

A. '99.

Q. Between those years those old settlers got their quantity of water, did they?

A. To the best of my knowledge they did.

Q. There was a time when you did have knowledge on the subject absolutely?

A.

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A. Yes, sir; up to the time I quit the company.
Q. Up to '94?
A. Yes, sir.
Q. From '86 to '94 you know they did get it?, and the balance of the time you just casually observed from time to time?
A. Yes, sir.
Q. This water which they got was measured to them into their pipe line: Do you know anything about how they used it?
A. They used it for irrigation and domestic purposes.
Q. Do you know where they used it?
A. I could go to each lot that it was used on, but I can't describe it.to you.
Q. Suppose I just get out a list of those places and refresh your memory on it. Do you remember the D. R. Kilburn place?
A. Yes, sir.
Q. Do you remember the acreage of it?
A. It was originally 40 acres.
Q. We will treat that D. R. Kilburn place as being one place for the purposes of your testimony.
A. Yes, ,sir.
Q. Do you remember how much water it got-- 40 acres?
A. It had five inches.
Q. That would be an inch to each 8 acres?
A. Yes, sir.
Q. Do you remember whether that was the quantity of water which the old settlers had relative to their acreage? That is to say, one inch to each 8 acres?
A. An inch to 8 acres is what they had.
Q. Do you know whether that five inches was used on the

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Kilburn place?

A It was.

Q. For any beneficial purpose?

A. Yes, sir.

Q. What? Irrigation?

A. Irrigation and domestic use.

Q. Do you know whether that quantity of water was necessary for the proper irrigation of that 40 acres?

A. I think it was.

Q. Did it constitute any surplus or was it just enough or scarcely enough?

A. I think they used it all. I don't think there was any of it went to waste.

Q. It was all put to proper use, was it?

A. Yes, sir.

Q. How was it w th respect to time? Was it used during each of those years? On each one of the dry seasons of those years?

A. Yes, sir.

Q. Did you know the place called the W. J. Kincaid place?

A. Yes, sir.

Q. What was the area of that?

A. I can't tell you exactly.

Q. Do you remember how much water it had?

A. No, sir; I do not.

Q. Whatever it did have, was it used-- what water was used there was it properly used?

A. It was used for irrigation and domestic use.

Q. You make the same answer there as to the Kilburn place?

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A. Yes, sir.

Q. The Thomas F eron place?

A. Yes, sir.

Q. How many acres?

A. 20 acres.

Q. That would have 2-1/2 inches?

A. Yes, sir.

Q. Was it used just in the same manner as you have described in the Kilburn place?

A. Yes, sir.

Q. And during the same time?

A. Yes, sir.

Q. The F. G. Smith place; what was the area of that?

A. 20 acres.

Q. What would you say as to the use of water there?

A. Just about the same.

Q. And in the same proportion?

A. Yes, sir.

Q. The T. L. Hall place.

A. That was under the same condition. The water was used about the same.

Q. Do you remember the area of the Hall place?

A. It was 10 acres, I think.

Q. And the same proportion of water?

A. Yes, sir.

Q. The E. P. Norwood place: What was the area of that?

A. 20 acres, I think.

Q. And the same wter right?

A. Yes, sir.

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Q. And the same use of the water?
A. Yes, sir.
Q. The S. P. Kincaid place?
A. I don't remember just the acreage there, but it was used under the same conditions and the same proportion to the acre.
Q. The same water per acre, an inch to 8 acres?
A. Yes, sir.
Q. The Thomas Cunning place.
A. That was a five-acre tract under the same proportion per acre.
Q. And water used for the same purpose and to the same extent per acre?
A. Yes, sir.
Q. The M. J. Kincaid place.
A. I don't remember just the acreage there, but it was under the same proportion.
Q. The same system and the same proportion and for the same purposes and to the same extent?
A. Yes, sir.
Q. The A. Southworth place.
A. That was a 10-acre tract.
A. 10 or 20?
A. Now I won't be sure.
Q. Whatever it may have been , did it have the same water right of one inch to 8 acres?
A. Yes, sir.
Q. Used for the same purposes?
A. Yes, sir.
Q. The W. H. Denham place.

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A. Five acres, under the same rate.

Q. Used for the same purposes and to the same extent?

A. Yes, sir.

Q. And equally necessary?

A. Yes, sir.

Q. The J. W. Moore place. Do you remember that place?

A. I don't remember that name.

Q. Do you remember the Davenport place?

A. Yes, sir.

Q. What was that?

A. a 20-acre tract.

Q. And had the same water right of one inch to 8 acres?

A. Yes, sir.

Q. Used for the same purposes?

A. Yes, sir.

Q. The Elizabeth Smith place?

A. That was a 10-acre tract.

Q. The same extent of water right?

A. Yes, sir.

Q. And was it for the same purposes that it was used?

A. Yes, sir.

Q. John Maddock.

A. That was a 20-acre tract.

Q. The same water right and used for the same purposes?

A. Yes, sir.

Q. The S. M. Nichols place.

A. That was a 20-acre tract, under the same water right.

Q. And used for the same purposes and the same extent?

A. Yes, sir.

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A. The C. D. Manchester place.

A. That was a 10-acre tract.

Q. Did it have the same water right?

A. The same water right and used for the same purposes.

Q. The A. Stinchfield place. You remember that place?

A. I remember the place but I can't call the number of acres.

Q. Did it have one of the old settlers' rights?

A. Yes, sir.

Q. And the water was used in the same way and to the same extent?

A. Yes, sir.

Q. You referred to this settlement of Cucamonga by the use of the term "colony". How do you happen to use that expression?

A. For the simple reason that the Cucamonga Fruit Land Company subdivided the tract and it was first called the Cucamonga colony.

Q. That is what it was known as when you came there first?

A. Yes, sir; I think so.

Q. This land had been sold in these small tracts and the holdings were in the tracts that I have named, some in 20, 5, 40 acres and so on?

A. Yes, sir.

Q. And these people were living on these respective tracts?

A. Yes, sir.

Q. And having their families there?

A. Yes, sir.

Q. And had orchards planted out?

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A. Yes, sir.

Q. And vineyards?

A. Yes, sir.

Q. And alfalfa patches?

A. Yes, sir.

Q. And truck patches and garden?

A. Yes, sir.

Q. And irrigated these orchards and vineyards and alfalfa patches and truck patches by the use of this water?

A. Yes, sir.

Q. And made a living there?

A. Yes, sir.

By Mr. Haskell:-

Q. During the time that you were acting as zanjero for the Cucamonga Water Company did you deliver any water to George D. Haven?

A. Yes, sir.

Q. How much and how was that delivered? Describe how it was delivered?

A. That water was delivered under pressure in an iron pipe. It was piped in a sheet iron pipe to the corner of section 1, at the southwest corner, and I think he piped it from there to his place himself.

Q. How much water was he entitled to?

A. 4 inches.

Q. Did you deliver that water to him at that point?

A. Yes, sir.

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Q. And did you deliver that water to him at the point of pressure delivery?

A. Yes, sir.

Q. Did you deliver any water on the Marsicano property?

A. No, sir.

Q. Did you deliver any water on the Hayden roperty?

A. We delivered water on the - -

Q. On the Matthew Turner property?

A. Yes, sir; we delivered water on that?

Q. How much?

A. We delivered 6 inches there I think ; there is 60 acres in the tract.

Q. During the time you were zanjero there?

A. Yes, sir.

Cross Examination.

MR. CHAPMAN, Q. You say you were in the employ of the Cucamonga Water Company?

A. Yes, sir.

Q. From 1886 to 1894? A. Yes, sir.

Q. And were zanjero of that company?

A. I was zanjero,- assistant, under thax a man by the name of Marine, for the first two years; a ter that I had charge of it alone.

Q. So far as this old settlers right was concerned, you delivered that to that company, in the whole amonnt, to that Old Settlers Cpmpany?

A. Yes, sir.

Q. You did not attend to the distribution of it to the individual members?

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A. No, sir.
Q. Did you make such distribution of such quantity to any other person or corporation in the same way?
A. No, sir; I think not.
Q. Did any other person have any interest in the waters you had control of, except the Old Settlers, and the Cucamonga Water Company?
A. Why there was some parties that hadrights in the system there that didn't have stock; they had an inch to ten acres; it was a prior right I think they called it.
Q. Did you distribute to them individually?
A. Yes, sir.
Q. Do you know to what extent the waters were used by those who were not stockholders of the Cucamonga Water Company, who held under some prior rights?
A. To what use it was put to?
Q. No; what was the amount of it?
A. Well, I couldn't tell you just exactly now.
Q. Could you approximate it?
A. I couldn't give you any estimate of that now; I haven't any recordof it.
Q. Did you have anything to do with the handling, management or control of the water after 1894?
A. No, sir.
Q. From that time, from 1894, up to 1901, the time you left there, what business were you engaged in?
A. I had charge of the Hermosa water system. That was a separate system.
Q. Where did they get water from?

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A. They gottheir water from Deer Canyon, up in the canyon.

Q. And did not obtain it from the Cucamonga Water Company?

A. No, sir.

Q. Nor the Cucamonga Fruit Land Company?

A. No, sir.

Q. Was that some individual right of their own?

A. That was their own right.

Q. You don't know how they acquired it?

A. Why, they acquired it by location up in Deer Canyon.

Q. Up to 1894 when you ceased to be connected with the company, had there been any diminution of the waters of the stream, Cucamonga Stream?

A. Nothing noticeable, no.

Q. At what time did you begin to notice there was any diminution in the quantity of water flowing in the stream?

A. About 1899.

Q. Did you have the management and distribution of any other wat r than that which was obtained from this Y tunnel?

A. The time I was zanjero?

Q. Yes, sir.

A. Yes, sir; I had the distribution of half of it.

Q. What other water did you have control of?

A. I had control,of half of the creek water, and all of the water on the west side.

Q. All of the water on the west side?

A. Yes, sir.

Q. What kind of a conduit was used to carry the waters from the west side?

A. There was a concrete pipe.

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Q. About what size?

A. Well, it was some 24 inch, some 16, and it ran down to as small as six inch in some places.

Q. Do you know about how much water you donductedthrough that pipe and managed and controlled?

A. onthe west side?

Q. Yes, sir?

A. Oh, I think sometimes there was as high as 150 inches.

Q. Did that management remain unchanged up to the time you left there?

A. I think so.

Q. Where was the well located which you say was fitted with a pump?

A. Whyk it was south of the Y tunnel, and about 600 feet from the creek.

Q. In which direction?

A. East of the creek.

Q. Do you know how deep it was?

A. No, sir; I do not.

Q. Do you know how much water was obtained from it?

A. I was there and looked at the stream, and I should guess it was about 20 inches.

Q. At what time was that?

A. Well, I couldn't give you the exact dates.

Q. How long did they continue to use that well to your knowledge? A. I don't know.

Q. Was it used at the time you left there?

A. Yes, sir.

Q. And you don't know how long afterwards?

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A. No, sir.

Q. Do you know about what quantity of water was being obtained from it at the time you left there?

A. No, sir; I do not.

Redirect Examination.

MR. HASKELL, Q. Where did this water that came from the west side, where was it mingled with the water from the east side, at what point?

A. Well, it was about a mile and a quarter south, and nearly a mile east of there, before it mingled with the water from the other side.

MR. WATERS, Q. What werethe sources of this water from the west side? Wells or Springs?

A. Well, it was a tunnel and a cienega; there was no wells there at that time. Well, there was two little wells that didn't amount to very much up on the cienega there, that flowed probably at one time, 15 or 20 inches, but they finally decr ased.

Q. Were those wells in the tunnel?

A. No, sir.

Q. Did they flow into the tunnel?

A. No, sir.

Q. Not connected with the tunnel then at all?

A. No; they were connected with the cienega above the tunnel.

Q. Was there a way provided for the water from those wells to flow into the tunnel?

A. No, sir.

Q. Then how did the water from those wells get into the west side system?

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A. It ran down in a separate pipe line down to the reservoir below there.

Q. In an open ditch or a pipe line?

A. In a cementpipe, a 16 inch pipe.

THE COURT, Q. This cienega that you speak of on the west side, is that on the west slope of the red hill?

A. Yes, sir.

Q. Wasn't that afterwards cut into the tunnel?

A. I think those wells were cut into the tunnel afterwards.

Q. That was not during your administration?

A. No, sir.

MR. WATERS, Q. Do you know when they were cut into the tunnel?

A. I couldn't tell you.

Q. Do you know a time up to which they were not cut into the tunnel? Were they cut in as early as 1894?

A. No, sir.

Q. When after that, you don't know?

A. No, sir.

MR. HASKELL, Q. How large was that cienega?

A. On the west side?

Q. Yes, sir?

A. I should think there was probably ten or twelve acres in it.

Q. And how far distant was it from the cienega on the east isde, about?

A. About half a mile.

Q. And how much water naturally raised on that cienega at that time?

A. On the west side?

Q. Yes, sir?

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A. Well, there was as high as 50 inches ran out of that cienega at one time.
Q. What was the cienega composed of?
A. Well, it was a swamp, grown up with swamp grass, and willows and tules.
Q. Were there many tules?
A. Not very many tules on that side.
Q. Was the soil anything like the nature of a peat bog?
A. Yes, sir; something like it.
Q. When it became dry would it burn if you know?
A. Yes, sir; it would burn over when it was dry.
Q. How deep was that peat if you know?
A. Well, it varied; in some places it was five or six feet, and in some places not more than two feet.
Q. Was there any large timber growing on the margin?
A. No, sir.
Q. Were there any sycamores around in that neighborhood?
A. There were some sycamores around there, but not in the marsh.
Q. Were there any willows?
A. There were some willows in the marsh.
Q. Any large sycamores around the margins of the marsh?
A. Yes, sir.
Q. Have you seen those trees recently?
A. No, sir.
Q. Within the last two or three years?
A. No, sir.
MR. WATERS, Q. How long was the Eady tunnel in 1894?
A. In 1894, it was about 2000 feet as near as I can remember.

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Q. When was the Eady tunnel dug or excavated to that depth?

A. If I remember right it was started in 1888; it might have been in 1887, but I wouldn't undertake to say just exactly the date.

Q. How far was it extended into the hill in 1894?

A. About 2000 feet.

THE COURT, Q. Who started that tunnel in the first place? The Cucamonga Water Company?

A. The Cucamonga Fruit Land Company.

Recross Examination.

MR. CHAPMAN, Q. That water that you obtained, that you had chargeof that came from the west side, you say was mingled with the waters from the East side, about xxxfxxxmixxxsaxxhfxx a mile and a half south?

A. There was a connection made so that we could run it clear over to the lower part of the Colony on the East side.

Q. On the East side?

A. Yes, sir.

Q. When you did take the water down there, to whom was that distributed?

A. The different settlers around over the tract.

Q. But not to the Old Settlers was it?

A. No, sir.

THE COURT, Q. Was it ever used on the east side of the settlement?

A. It was used in the southeast part.

Q. You were speaking of an arrangement being made whereby it might be carried across?

A. You couldn't carry it across by gravity, unless you

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continued soth with a pipe line. It was carried south to the Santa Fe railroad, and east along the Santa Fe railroad, to a reservoir about a quarter of a mile south of the track.
Q. Do you mean that is the way it was habitually used or occasionally?
A. Occasionally; when it was necessary to have more water over in that part.
Q. What I am trying to get at, how was it used over there occasionally? Under what sort of an arrangement? Did the same partiesown land over there, or did they make an exchange or what?
A. Well, I made a practice to deliver the water to the settlers every thirty days, if they demanded it, and when I had a surplus on one side and a shortage on the other, I shifted around from one place to another.
MR. HASKELL, Q. You did not make any distinction then, in the class of water, as to who you delivered it to, as far as there was any necessity for using it?
A. Well, no. But as far as the Old Settlers water was concerned, I couldn't use that water from the west side in there, because it was too low to flow in there by gravity.
Q. But when you say Old Settlers, you mean the people that used the 33 and a fraction number of inches don't you?
A. Yes, sir.
Q. Is that what you mean by Old Settlers?
A. Yes, sir.
Q. But there were other old settlers there that had independent rights, as you have testified, wasn't there?
A. Yes, sir.

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Q. And as to them you made no distinction when it was necessary to deliver the water?

A. I deliveredthe water from wherever it would be the most convenient for me; they never made any complaint.

MR. JOLIFFE, Q. This water on the west side was used mainly south of the Santa Fe railroad?

A. Most all of it; yes, sir.

Q. How much of it was used north of the Santa Fe if you know?

A. I think there was about 60 or 70 acres under cultivation up near the red hill that was used from that source; the Jordan property was 40 acres, and the Eady property was 10 acres

Q. And the Hall property too?

A. Mr. Hall and Mr. William Pridham had 40 acres in there; there was probably 100 acres.

Q. And you think at times there was as much as 150 inches of water on the west side?

A. Yes, sir.

Q. And that was mainly flowing through the tunnel?

A. Why the biggest half of it was coming from the tunnel I think.

Q. And that was prior to 1894?

A. Yes, sir.

Redirect Examination.

MR. BRITT, Q. You are acquainted with the Haskell place where the so-called Haskell well is situated?

A. Yes, sir.

Q. Do you remember when the Haskell well was first sunk by Haskell himself?

A. I couldn't give you the exact date, but I remember the

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time well enough.

Q. You remember thecircumstance?

A. Yes, sir.

Q. Do you remember the depth of the well?

A. About 40 feet to the water level.

Q. Was it pumped any?

A. Yes, sir.

Q. How long was that after you became the superintendent or the Zanjero for the Fruit Land Company?

A. Well, I couldn't give you the exact date, but it was some three or four years after I started to work there that they put this well down.

Q. About how much water did they lift from the well?

A. Well, he had a very crude pumping plant there, and it was a small gasoline engine, and when he ran the engine I should think it would lift about 15 inches.

Q. How much of the time did he run the engine?

A. How often do you say?

Q. Yes, sir? How much of the time during the irrigating season?

A. Well, he had about ten acres of trees planted there, and that is all he used it for, for that ten acres; he probably pumped it two or three days in the month.

Q. Would he keep that up during the entire year, or through the irrigating season?

A. Just through the Summer season.

Q. He had about twenty acres of land?

A. He had 20 acres of land, and I think he had about ten planted.

Q. Was there any water pumped from that well by Haskell

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used off his land?
A. No, sir; I don't think there was; not to my knowledge.
Q. How long did that condition of affairs continue that he cultivated and irrigated about ten acres of land?
A. Up to the time he sold to the San Antonio Water Company.
Q. Do you know about what year that was?
A. I couldn't tell you the exact date. It was after I resigned ffwom the water company.
Q. Now, about the Rubio well: Was there a party by the name of Rubio who lived on that place?
A. Yes, sir.
Q. How much land did he irrigate?
A. Well, to the best of my knowledge I think it was ten acres.
Q. Did you ever pay any attention to the well he had and the depth of it?
A. No, sir.
Q. Did you ever see it pumped?
A. No, sir; I never examined his well; I was there when he was pumping one day, and there was a stream I should judge of about twenty inches.
Q. How much of the time did he pump that 20 inch stream?
A. I couldn't tell you.
Q. Was there any land irrigated from that well, except this land of Rubio, about ten acres in all?
A. I don't think there was.
Q. Was there any to your knowledge, any off his land irriated irrigated from that well?
A. No, sir.
Q. If there had been would you have known it?

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A. It is more than likely I would; I was across the road there every day by the Rubio tract, nearly every day in the year, when I was zanjero.

Q. This Rubio place that you mention, joined the Haskell place on the west?

A. Yes, sir.

Q. How long did that use from the Rubio well continue?

A. I think three or four years.

Q. And ending about what time?

A. I couldn't say as to that.

Q. With reference to the time we will say when you moved away from that part of the country?

A. I couldn't say when he discontinued that pump.

Q. Do you know whether there was any different use made of it, before the time that the property passed to the control of the San Antonio Water Company?

A. I don't think there was.

Q Did you have any knowledge of a well that was bored a few years ago on the Reche place, the little piece of land two or three acres in extent, a little way below the Cucamonga vineyard?

A. Yes, sir; I know where that well is, or where it was.

Q. Do you know the persons who dug it?

A. I know one of the parties: Stevenson or Stevens.

Q. Did you make any observation on that well personally to see what sort of a well it was?

A. Yes, sir.

Q. What did you find?

A. I found it was a well about four feet square, dug down

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into the bed of the creek there, the Cucamonga Creek, about one hundred feet south of the San Bernardino road, or 150,- somewhere along there.

Q. What did it contain? Anything beside air?

A. Well, there was very little water in the bottom of the well; they pumped it out with a small gasoline pump; they pumped the well dry while they worked on down; I think the well finally dried up altogether.

Q. How deep was the well?

A. I think it was in the neighborhood of 200 feet.

THE COURT, Q. About when was that well there?

A. 1899 I think it was started.

MR. BRITT, Q. Where was it with reference to the bridge a short distance below the vineyard, on the San Bernardino road, markedon this map, Exhibit 1? There is the winery: where was it with reference to the winery?

A. It was about 300 feet west of the winery and a little bit north.

MR. HASKELL Q. This water on the west side was used in the manner you have described, down to the time the San Antonio Water Company took charge of it?

A. The San Antonio Water Company I don't think had any water there at the time I was there; I don't think the San Antonio Water Company had any water in that Cienega at the time I quit there.

Q. But you knew something about this water how it was distributed, until after 1899?

A. Yes, sir.

Q. It was distributed in the same way wasn't it until

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that time?
A. Yes, sir.
Q. And the San Antonio Water Company took charge there in 1899 or 1900, do you know?
MR. CHAPMAN: We object to that on the ground that it is asking for something that has not been proved; that it is not cross examination or re-examination.
THE COURT, Q. Do you know when they took charge?
A. I couldn't give you the exact date.
MR. HASKELL, Q. It was about that time was it?
A. Yes, sir.
MR. CHAPMAN, Q. About that time that what happened?
A. That the San Antonio Water Company bought the water there and laid a pipe line.
Q. That was the water from the wells up there that you are speaking of, is it not?
A. Water that was developed up there in the cienegas.
Q. Didn't the same parties continue to get water through their tunnel and pipe line from the west side just the same as before?
A. I could not testify to that, because I had not charge of the water; I don't know whether they got any or not.
Q. Now, the waters from the west side, Mr. Graham, that was taken down and supplied to other parties through this Cucamonga Water Company: do you know who they were?
A. Well, I haven't a list of their names, but I could recall several of them.
Q. Well, who were they that you can recall?
A. H. H. Morgan, H. K. Shields, Edward Frazier, W. I. Haws,

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Robert Gray, Lucas; and several others; I can't exactly call their names now.

Q. None of those that you mention were the holders of any interest in this 33.8 inches right?

A. No, sir.

Q. Did you distribute water to George D. Haven?

A. Yes, sir.

Q. From what source?

A. From the East source.

Q. To.....Marsicano?

A. No, sir.

Q. To Matthew Turner?

A. Yes, sir.

Q. From what source?

A. From the east source.

Q. Eva T. Andrews? You don't recall that?

A. Andrews, I don't remember.

Q. Ashland M. Turner?

A. It wasknown as the Captain Turner place when I distributed the water there; there were three or four heirs to it.

Q. And that you distributed from the East side?

A. Yes, sir.

Q. George D. Runnels? Did he occupy that same place?

A. He did at one time.

Q. Charlotte B. Chapman: Did you distribute water to her? Or was she one of the parties -

A. She was one of the parties.

Q. Interested in the same place that Matthew Turner was?

A. Yes, sir.

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Q. Harriet B. Mc.Kinley?
A. I distributed water to Mrs. Mc.Kinley from the east side.
Q. About what proportion of the waters from the east side was conducted south of the Santa Fe Railroad?
A. I couldn't tell you that exactly.
Q. Approximately? A. About one fourth of them.
MR. WATERS, Q. Do you mean one fourth of the whole, or one fourth of the part that you handled?
A. One fourth of the part that I handled.
Q. You one handled one half?
A. I only handled one half of the water on the east side.
Q. Do you consider that you handled the 33.84 inches or do you exclude that too?
A. I handled that to this certain point where it was turned over to the settlers.
MR. JOLIFFE, Q. When you said one fourth, did you mean one fourth of the waters from the east side, or one fourth altogether? A. One fourth of the waters from the east side.
Q. And of the west side nearly all of it went south?
A. All except about 100 acres or so that was irrigated up near the San Bernardino road.
Q. Which would be served with about ten inches of water?
A. Something like that.
MR. WATERS, Q. I have understood you to say that you distributed s uth of the Santa Fe track about one fourth of the half which you handled: That would be one eighth of the whole, is that about it? A. Yes, sir.

-o-

Here the Court takes a recess until tomorrow, May 16th, 1907, at ten o'clock A.M.

-o-

OFFICIAL REPORTER, SUPERIOR COURT.

DEFENDANT.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Company, et al

Plaintiff

vs.

San Antonio Water Company

Defendant

VOLUME III.

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I. BENJAMIN, Official Reporter

May 16th, 1907. Third Day.

MR. HASKELL. As to one of the complainants in intervention Harriet N. McKinley, I now move to dismiss.

--o--

T. G. GRAHAM.

T. G. Graham, heretofore sworn and examined being recalled for plaintiffs, testified as follows:-

DIRECT EXAMINATION.

MR. BRITT. Q. Mr. Graham, did you personally do any work in that "Y" tunnel when it was constructed?

A. Yes, sir.

Q. Did you take note of the nature of the ground through which it was driven?

A. Yes, sir.

Q. You remember in particular the west branch of the "Y" and the sort of mate ial in which the excavation of that branch of the tunnel was stopped?

A. Yes, sir.

Q. When the tunne was finished?

A. Yes, sir.

Q. What sort of material was it in which the tunnel ended at that place?

A. It ended in gravel or granite boulders.

Q. Coarse or fine?

A. Coarse; very coarse.

Q. What were the dimensions of the face of the tunnel at that point? How high was the tunnel?

A. It was 6 feet high and 2 1/2 feet wide on top and 3 1/2 on the bottom, if I remember right.

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Q. You say the material consisted to a considerable extent of coarse boulders; to what extent was it coarse boulders?

A. There was boulders, in there, I should think that would weight 3 or 400 pounds, and from that down to pebbles.

Q. What did you observe as to the movement of the water going into the face of the tunnel at that point?

A. The largest proportion of the water came in from the west branch, and there seemed to be a stronger flow right in the face of the tunnel w ere we stopped than anywhere else.

Q. Can you describe it any more particularly than that? How did it come in? Did it trickle in or was it a mere seepage or were there small streams of water?

A. It gushed out in a stream between those boulders in the face of the tunnel.

Q. How was it in the east branch of that "Y" tunnel?

A. The formation was a little differetn in the east branch; it was finer and more quicksand and not so much water.

Q. How did the material compare as to size of the particles of gravel and boulders?

A. Very much smaller.

MR. HASKELL. Q. Have you ever observed the formation of the Edy tunnel?

A. Yes, sir.

Q. You may describe that formation as you haveobserved it, beginning at the mouth of the tunnel and in a northerly direction.

A. As near as I can remember there is about a thousand feet of clay. That is, a kind of cement formation.

Q Was it hard or soft?

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A. It was hard. We used powder in it.
Q. Was this formation penetratable by water to any extent?
A. I think not. I think it was impervious to water.
Q. Was any water coming in at the sides or bottom there?
A. No, sir it was perfectly dry.
Q. Have you observed a similar formation in other parts of the Red Hill?
A. Yes, sir.
Q. How does it compare?
A. About the same as those parts of the Red Hill.
Q. Do you mean the surface formation or that underneath?
A. The surface.
Q. Where have you seen a like or similar formation.
A. Right where the excavation was done for the brick yard at the lower end of the Red Hill.
Q. Have you observed the formation in the natural channel of what is called the east side Springs? Have you seen any such formation there.
A. Yes, sir.
Q. Now what was the formation of the Edy tunnel after you passed the first 1000 feet or such a matter?
A. We got into water, quicksand and gravel.
Q. How far did that formation extend?
A. It extended as far as the tunnel ran at my time there; about 2000 feet; that is, from the mouth.
Q. During your time were there any wells bored in that tunnel?
A. There was one well, I think, bored down through that tunnel, but I think it was a failure. It never produced any

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water to amount to anything. It got down and the tools got hung up on a boulder.

Q. In your time you have often heard the expression "Cucamonga Springs" didn't you?

A. Yes, sir.

Q. What was th t generally understood to mean?

MR. BRITT. I don't think the understanding of the witness as to the meaning of "Cucamonga Springs" is a material subject of inquiry at the present time. It would appear that "Cucamonga Springs" had a signification testified to by Mr. Trask yesterday on cross examination. We did not on behalf of plaintiffs bring it out and it is not material.

MR. GREGG. We object on the ground that the question asked is not responsive to any of the issues made by the pleadings and on the score that if counsel now seeks by this question to show that the Cucamonga Springs are on the west side of the Red Hills that such proof would be contrary to the averments of this complaint.

THE COURT. It seems to me you are all borrowing trouble. The term "Cucamonga Springs" has been used, and the witness is simply asked to explain what is meant by "Cucamonga Springs". Mr. Trask gave his understanding of it; Maybe the others understand something entirely different. It is only explanatory of the evidence already in. The objection is overruled. I think perhaps the form of your question is somewhat objectionable as it calls for the opinion of the witness. Defendant excepts.

MR. HASKELL. I desire to state that the issues do raise the question of what the Cucamonga Springs are. Plaintiffs in

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intervention set up a right in the Cucamonga Springs.
MR. CHAPMAN. We wish to make the further objection that there is no foundation laid for the question.
THE COURT. The objection is sustained.
Q. You were the agent in charge of the de ivery and distribution of this water?
A. Yes, sir.
Q. And the deivery and distribution of the waters of the Cucamonga Springs?
A. Yes, sir.
Q. What did they consist of?
MR. CHAPMAN. We renew the objection.
THE COURT. OVERRRULED. Defendant excepts.
A. I always considered that the Cucamonga Springs--
MR. CHAPMAN. We move to strike that out as not responsive to the question.
THE COURT. Stricken out.
A. (Question read) The waters of the east and west side together.

CROSS EXAMINATION.

MR. CHAPMAN. Q. When did you work in this "Y" tunnel? When did you commence there?
A. I commenced there in '86.
Q. That was when the tunnel itself was commenced, was it not?
A. I think it was in the fall of 1886.
Q. And how long was it before it was completed?
A. It must have been nearly a year. There was work done after that too.
Q. How long was it before it was completed to the extent

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which it now is?

A. From the time it was started?

Q. Yes, sir.

A. There was work done in '97 in that tunnel.

Q. Extending the tunnel?

A. No, sir.

Q. What I am asking is, how long was it from the time the tunnel was commenced before it was completed or dug to the extent to which it goes now?

A. The last work I remember of being done was in '97. There was some retimbering done, and they lowered the grade in places, and some wells bored there which I have no knowledge of. I had nothing to do with that work.

Q. They didn't make the tunnel any longer?

A. Not to my knowledge.

Q Do you know to what distance each branch of the tunnel does extend, -- how far from the mouth of it?

A. I don't rememberjust the exact length of it now.

MR. BRITT. We will have some exact figures on that.

Q. I would like to know something about to what point in the tunnel you had arrived when you found the gravel and boulders and the water gushing out?

A. I can state that there was gravel and boulders from the time we started that tunnel in the open cut. It was 16 feet deep where the tunnel was started and there was gravel and boulders from there to the end of it.

Q. At the end of it or the place where you worked, I understood you to say that water was poring from the face of the tunnel through the gravel and boulders?

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A. Yes, sir.

Q. What distance were you in on this tunnel at the time that occurred?

A. Something over 500 feet or about that.

Q. That was about asfar as the tunnel ever was extended in, wasn't it, to your knowledge?

A. Yes, sir.

Q. Do you remember at what time of the year it was that you had reached the point to which you have testified when you observed this water flowing?

A. No, I have no record of it.

Q. Do you remember what year it was?

A. In '87 I think.

Q. The year 1886 was a flood season, was it not?

A. No, sir; I don't think it was.

Q. Do you remember whether it was or not?

A. It was not a very wet season.

Q. Do you rememberwhether the year 1889 was a very wet season.

A. Yes, sir.

Q. Do you remember whether there was a very wet season some years-- 2 years-- preceding 1889?

A. I remember there was a very wet season in 1884.

Q. But you don't remember that it was very wet in 1886?

A. No, sir.

Q. And you rather think it was not very wet. Now when you observed this phenomenon of the flow of water do you remember what time in the year it was?

A. Some time during the summer of 1887.

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Q. Did you quit work at that point?
A. Yes, sir.
Q. And did no further work in extending that tunnel ever that you know of?
A. Yes, sir; there was other work done afterwards.
Q. In extending the tunnel still further?
A. I think there was.
Q Do you know when that was done?
A. No, sir, I have no record of it.
Q. Can you approximate it?
A. I think there was some work done in '88, but I don't remember just what it was.
Q. Was the work of which you speak done while you were still in charge of and in control of the distribution of water?
A. Yes, sir.
Q. Do you know whay the work was done to extend the tunnel still further?
A. For the development of water.
Q. The development of more water than was then flowing?
A. Yes, sir;
Q. When you speak of the Cucamonga Springs as including both the east and the west, what do you have reference to as the west springs?
A. The west springs is the water on the west side of the hills.
Q. Entirely on the west side or west from the other and greater springs in that same vicinity?
A. On the west side of the crown of the hill.

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Q. How far from the crown of the hill?

A. Various distances.

Q. Can you give us the name of any person who ever applied to the springs west of the crown of the hill the term "Cucamonga Springs"?

A. I don't know as I can give you any particular person, but all of us in that neighborhood recognized the west side the same as the east side as the Cucamonga Springs.

Q. How do you know?

A. I know in one way: when they demanded their water I gave them their water from the Cucamonga Springs and they never asked any questions whether it was east or west that I got the water.

Q. To whom did you give the water of the west side springs?

A. To the settlers down there.

Q. What settlers?

A. I named several yesterday.

Q. None of the intervenors in this case? None of those names that I read to you yesterday?

A. I don't remembernow.

Q. Do you know who the Old Settlers are of the Old Settlers Water Company?

A. Yes, sir.

Q. You didn't delivery any water from the west side springs to them, did you?

A. No, sir.

Q. Is it not a fact that the springs to the east of the crown of this Red Hill had for its distinctive name the "Cucamonga Springs", and that when that term was used in any

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broader sense it was in a sort of a loose way, referring to all the waters of the springs on the ranch?

A. Not that I know of.

Q. Did you ever hea r the name or term "Hellman Springs"?

A. I never heard of it.

Q. At any time?

A. No, sir.

Q. Were you a witness in the case of Smith against the Cucamonga Water Company?

A. I don't know as I was, I don't remembernow.

Q. Do you remember of being r ssent at the trial of that case?

A. No, I do not.

Q. Do you remember of being a witness in the case of Smith against the Cucamonga Water Company in which case a Mr. Scribey was a witness?

A. I don't remember f of that.

Q. How long did the water continue to flow from this tunnel in the manner that it did after the time that you quit work there?

A. It continued to flow al the time that I was there with the Company.

Q. What effect did it have on those springs?

A. Well, it seemed to dry the upper part of the cienega more or less, but it didn't affect the lower part.

Q. Were you a witness in the case of McPherson and others against the Cucamonga Fruit Land Company?

A. Yes, sir.

DQ Do you remember testifying in that c ase as follows:

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"Q. Now, you say at that time there was cienegas that run up along from the mouth of that tunnel, how far?"

"A. Oh, I said about 600 feet, I think.

"Q. Now, did that tunnel affect them any when it was driven right into them?

" A. Well, it didn't affect them right at the time, no.

"Q How long before it did affect them?

"A. Well, it was quite a little while.

"Q. Well, about how long? Just tell us. We want to know how it affects them-- how long before it did affect them?

"A. Well, there was water down there in that little cienega for a couple of years but a very small stream.

"Q. It speedily dried them out?

A. No, sir.

"Q. In the course of a couple of years it dried them out?

"A. Yes, sir.

"Q. Was it two years drying them out?

"A. I think it was about that." Do you remember so testifying?

MR. BRITT. Objected to as not cross examination, irrelevant and immaterial. This has reference not to the "Y" tunnel, as to which the witness was interrogated . And even if it did it is not cross examination as to anything that he testified to in chief.

THE COURT. It is cross examination as to what Mr. Haskell examined about.

Q What were you talking about when Mr. Haskell wasexamining you?

A. Talking about the "Y" tunnel.

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THE COURT. Q. Were you not talking about the Edy tunnel?
A. Yes, sir; we talked about both of the tunnels, and this testimony refers to the Edy tunnel as I understand it.
MR. CHAPMAN. Q. On which one of the tunnels was it that you found the boulders and gravel and water pouring from the face of the tunnel?
A. The "Y" tunnel.
Q. The testimony to which I have refered, that you have given in reference to the Edy tunnel, that was correct, was it?
A. I think so.
THE COURT. Q. The Edy tunnel is the one west of the Red Hill?
A. Yes, sir.
Q. And the term "Edy Tunnel" is never aplied to the "Y" tunnel?
A. Not that I know of.
MR. CHAPMAN. Q. The work that was done in 1897, which tunnel was that in?
A. I think there was men working in both tunnels in 1897.
Q. In response to one of my questions you said work had been done there as late as 1897; were you then talking about the Edy tunnel or the "Y" tunnel.
A. I was talking about the "Y" tunnel.
Q. What work was done in '97 in the "Y" tunnel?
A. I couldn't tell you exactly because I had nothing to do with the work at that time. There was some wells put down and there was also wells put down in the Edy tunnel in '97, I think.
Q. The wells put down in the Y tunnel, what were they put there for.

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A. I suppose for water.

Q. Weren't they put there because of the fact that the water from that tunnel had gradualy diminished in its flow and that they were seeking to get more water?

A. I suppose that was the idea; to get more water.

Q. That was the idea of extending that further into that mountain, was it not, in an earlier time?

MR. BRITT. Objected to on the ground that the witess has not been requested to give anything as to the policy of the persons by whom the tunnel was constructed.

THE COURT. The question seems to call for a conclusion. The objection is sustained. Defendant excepts.

Q. Do you know what the object of it was?

MR. BRITT. Objected to on the ground that the witness has not been interrogated about the object, and it is not proper cross examination.

THE COURT. The objection is sustained. Defendant excepts

RE DIRECT EXAMINATION.

MR. BRITT. Q. You were asked about a well in that Edy tunnel bored some where within the first 2000 feet, which proved to be a dry well; how far was that from the mouth of the tunnel.

A. I couldn't give the exact measure, but I remember that we had a cave-in 1600 feet from the mouth, a bad cave, and it was somewhereabout 75 feet above that that we had to put this well in.

Q. Was that the only well that was sunk in that Edy tunnel at that distance from the mouth?

A. I think it was.

Q. Was there any other well between that well and the

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mouth.

A. I think not, no, sir.

--o--

E. T. WRIGHT.

E. T. WRIGHT, a witness produced by plaintiffs being first duly sworn testified as follows:-

DIRECT EXAMINATION.

MR. BRITT. I desire to say in relation to the testimony of Mr. Wright that we shall probably want to interrogate him about several branches of the case. The testimony now relates merely to these maps on the board, and I would like to have the consent of counsel and court to obtain this testimony without completing the evidence of the witness at this time. Will there be any objection to that?

MR. CHAPMAN. None, so far as I am concerned.

MR. BRITT. Q. You are a civil engineer and surveyor by profession and a topographical engineer?

A. Yes, sir.

Q. And you have had something to do with the matter of hydraulic engineering?

A. Yes, sir.

Q. You reside in Los Angeles at present?

A. Yes, sir.

Q. Are you acquainted with the locality of the Cucamonga Springs in San Bernardino County?

A. Yes, sir.

Q. And have known that locality how long?

A. 24 years.

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Q. You are accustomed to making topographical maps, diagrams and charts?

A. Yes, sir.

Q. Are you well acquainted with the lands of the Cucamonga Vineyard Company and the lands of the Cucamonga Land and Irrigation Company, plaintiffs in this action?

A. I am.

Q. Including the property known as the Cucamonga Vineyard and the water manifestations, or some of them, known as the Cucamonga Springs?

A. Yes, sir.

Q. I will call our attention to this map or chart which has just been placed on the board (a blue print) which we propose to call Plaintiffs' Exhibit 2, the legend on the map being, "Map of lands below San Bernardino Base Line, Towns ip 1 South, Range 7 west, S. B. M.," with the words "To be sold and divided under decree of the Superior Court of San Bernardino County, California, case number 5363, surveyed by W. D. Nicholson, January 1895, scale, 1 inch to 300 feet." I will ask you first if you have examined the lines of this map and are sufficiently acquainted with the ground which it purports to represent, and whether or not the map shows correctly the lands of the Cucamonga Vineyard Company and the Cucamonga Land and Irrigation Company in that locality?

A. It does.

MR. CHAPMAN. Is that our method of proving title?

MR. BRITT. No, sir; it has nothing to do with title; it is merely a chart or map of the ground itself. We don't claim that it has any bearing or effect on the matter of title.

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Q. In the complaint here there is a place described as the lands of the Cucamonga Vineyard Company, a tract first of 56.8 acres. I wish you would point out on this map the location of that tract of 56.8 acres.

A. Commencing at the southeast corner of section 4 as shown on this map and it runs west about a half a mile, then north a little less than a quarter of a mile, thence east to the east line of section 4 and then south to the place of beginning.

Q. State whether or not that tract that you have n just now mentioned lies around the so-called Riche place?

A. It includes what is called the Riche place. I understand it is accepted.

Q. Is the Riche place named on the map?

A. Yes, sir; the distance is given on the map and it is shown as being on the east side of section 4 right next to the winery.

Q. There is next described on the map a tract of land of 530 acres and known as the Cucamonga Vineyard. I wish you would indicate that situation on this map?

A. That land commences at a point about 20 chains west from the southeast corner of section 4 and runs south a half a mile, east a quarter of a mile to the east line of section 9, thence south half a mile to the southeast corner of section 9, and then east half a mile to the center of Hellman avenue and the center line of section 10.

Q. What do you mean by that?

A. To the center line of section 10. Thence north about a mile and three quarters to the southeast corner of what is

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known as the 35 acre tract-- the Homestead Association owned it and sold it to Stowell some years ago. Thence west 17 1/2 chains to the southwest corner of the 35 acre tract; thence south a little less than three quarters of a mile to a point north of the San Bernardino road; thence it runs west a little less than three quarters of a mile to a granite monument in section 4; thence south to the south line of section 4; thence east a quarter of a mile to the place of beginning.

Q. Does this 530 acre tract last mentioned include within its boundaries what is known as the Cucamonga Vineyard?

A. It includes all of it; yes, sir.

Q. I will ask you to point out on this map first the tract of land which is described in the complaint and alleged to be t e property of plaintiff Cucamonga Land and Irrigation Company-- a tract 526.97 acres in extent. Where is that shownon this map if at all?

A. In the upper part of the map. The exterior boundaries-- do you want me to go around them?

Q. The north boundary is co-incident with the San Bernardino Base Line, isn't it?

A. Yes, sir; it is in section 3 and 4 both, 1 south, 7 west.

Q. Where is the tratc of land, alleged also to be the property ot the Cucamonga Land and Irrigation Company, containing a matter of 40.19 acres ?

A. That is also shown on this map, marked 40.19. It is a square piece on the westerly side, and there is an L shaped piece 2 chains wide on the east.

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Q. You are acquainted with the descriptions of these lands as they are stated in the complaint in this case, are you?

A. Yes, sir.

Q. Does this map depict the lands substantially as described in the complaint?

A. It does.

Q. State whether or not these several tracts lie together in one contiguous body-- form one contiguous body?

A. Yes, sir; they are shown so on the map.

Q. Does the map correctly show the boundaries?

A. Yes, sir. Shall I explain how the map was made?

Q. No, I don't care anything about that. Counsel on cross examination may interrogate you on that if they desire. Point out on this map Exhibit number 2 the location of the Cucamonga winery?

A. It is marked with a small place for a building marked "Winery" just a little north of the southwest corner of section 3.

Q. Close to the place called the Riche place?

A. Just east of the southeast corner of the Riche place.

Q. And where is the reservoir on this map into which water is conducted from the creek as has been stated in the testimony of some of the witnesses?

A. Marked with white curbed water lines. I don't see the word reservoir written. It is just north of the county road and inside of section 3, near the west edge.

Q. Do you know what is indicated on this map-- what particular natural features of ground there are indicated on this map by the irregular space extending from a northwesterly to

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a southeasterly direction across the entire map, which has a frosted appearance on the map? What is depicted by those marks and lines?

A. That is intended to represent the wash of the Cucamonga Creek. Practically poor land. We were classifying the land.

Q. Do you know whether it does do it?

A. It does do it actually.

Q. Now, within the boundaries of the tracts containing 526.97 acres as shown on the map, or within the lines of the picture of that tract contained on this map, appear certain other areas of irregular shape lying east of this wash and some distance north and northwest as shown on the map from the reservoir site, and containing marks which I believe are intended by people of your profession to indicate growth or vegetation. Do you know what those particular areas are intended to designate?

A. I think they designate the cienegas as they were in 1895.

Q. Are you able to say whether those marks do show correctly the area of the cienega land in that tract in that year, 1895?

A. Yes, sir.

Q. State whether you were frequently on the land in those times and both before and since?

A. I have been , both before and since.

Q Where is the bulk of the Cucamonga Vineyard shown on this map?

A. South of the San Bernardino County road, and west of Hellman Avenue.

Q. What do you call Hellman Avenue?

A. The east and west line shown on this map and marked

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"Hellman Avenue" on the map itself-- the east line which runs north and south on the map.

MR. CHAPMAN. Q. I understood you to say east and west, and I thought it was a mistake.

A. It was a mistake.

MR. BRITT. Q. There were cienega lands in 1895 existing on both sides of the wash of the creek?

A. Yes, sir.

Q. Can you show on this map the location of the Y tunnel to which some evidence has been adressed here?

A. Yes, sir. It is shown on this map by two lines in the shape of a Y at the northeasterly corner of section 4, and marked "Mouth of tunnel" where they come together.

Q. State whether that shows correctly the situation of this Y tunnel on the ground?

A. It does.

Q. With reference to the wash and the cienegas as they existed in 1895?

A. Yes, sir.

Q Now where on this map does the Red Hill which has been mentioned by the witnesses several times have its location?

A. What is known as the Red Hill is west of this wash, reaching clear from the base line in a southern direction to pretty near the San Bernardino County road, through the east part of the west half of section 4.

Q. What has been called in the testimony of some of the witnesses as the Edy tunnel; is that shown on this map?

A. Yes, sir.

Q. Where?

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A. It commences on the south line of section 4 and about the north line of lot 3 of section 9 and runs in a northerly and a little westerly direction through the westerly 180 acres of section 4.

Q. I will call your attention to this map which has been marked Plaintiffs' Exhibit 1 but not yet described or offered in evidence. What territory is depicted on plaintiffs' Exhibit 1 speaking generally?

A. Sections 3 and 4 and part of section 9, township 1 south, range 7 west, S. B. M., and several of the Homestead Association lots lying immediately adjacent on the north.

Q. State whether that map indicates with substantial accuracy the various topographical features which it purports to depict?

A. To the best of my knowledge and belief, it does.

Q. Are you well acquainted with the locality ?

A. Very well acquainted.

Q. It covers part of the same ground shown in exhibit 2?

A. ? Part of the same and a little more to the east and not as much to the south.

Q. Does it show something more to the north than exhibit 2?

A. Yes, sir; it shows those Homestead lots on the north also.

Q. Do you know whether or not this map plaintiffs' Exhibit 1 shows with substantial accuracy the location of the several wells about which Mr. Trask was questioned yesterday?

A. It does.

Q. That is, the Haskell well and the other wells lying to the west of the Haskell well?

A. Yes, sir. They are placed on the map and numbered.

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Q. On both of these maps, exhibits 1 and 2 , appears a narrow space bounded by straight lines extending across each of them marked "San Bernardino County Road"; state whether that shows on these maps the location of the highway across these lands relatively to the other objects you have mentioned.

A. It does.

Q. On each map a little to the northwest of what is marked as the Riche place and in the wash of the Cucamonga Creek there is a shaded area which seems to be a contraction of the San Bernardino County road; what doesthat mean?

A. It represents the bridge across Cucamonga Creek.

Q. Are those cienegas th t you mentioned while speaking of exhibit 2 shown also on exhibit 1?

A. Some of them are, but not quite the same shape, ad a little more is shown of the cienega on the west side of the Red Hill in exhibit 1 than in 2.

Q. How are they noted on exhibit 1? What sort of lines or marks or ~~xxxxxxxx~~ brands?

A. They have a sort of a growth marked on them to represent swampy land.

Q. Indicated by bunches of short blue lines?

A. Yes, sir.

Q Do those marks show substantially the locations of those cienegas as they were in 1895?

A. They show them more as they were 2 or 3 years later.

Q. That is, on exhibit 1?

A. Yes, sir. I think exhibit 1 was made practically a little later than exhibit 2.

MR. BRITT. We offer these 2 maps in evidence for the purpose

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of explaining the testimony of the several witnesses which has been already received, and testimony hereafter to be offered, and also in connection with the testimony which Mr. Wright has just now given; and we ask that they be received and marked respectively Plaintiffs' Exhibit 1 , and Plaintiffs' Exhibit 2.

THE COURT. They will be admitted.

Q. Mr. Wright, were you acquainted with what was known locally as the China cienega on that land?

A. Yes, sir.

Q. About where is that or was that situated?

A. I can mark it on the map.

Q. That is what I want you to do, indicate it on the map.

A. One of these points on exhibit 1 marked as a cienega--the second cienega you might call it south of the mouth of the Y tunnel--

MR. CHAPMAN. Hadn't you better put something there to designate it?

MR. BRITT. Mark it "China Cienega" on the area that you refer to. (Witness does as requested.)

CROSS EXAMINATION.

MR. CHAPMAN. Q. What is this line running to the west of the cienega?

A. That represents the brow of the hill where it becomes a steeper bank of the Red Hill to the west.

Q. The brow or the crown of the Red Hill, is it.

A. It is what is called the Red Hill on the west side of it. I don't think I could state if it is the steep bank that represents the top or the bottom.

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Q. If it represents the bottom which side of the hill is it?

A. The west side.

Q. What are these undulating lines that have a general course east and west across this map? What do they indicate?

A. Those are contour lines, and the marks on them showing them as elevations above mean sea level.

Q. Did you make this map?

A. Personally?

Q. Yes.

A. No, sir; it was made under my direction in my office.

Q. Did you put the figures on it?

A. A very few figures; the wells of the San Antonio Water Company north of Base Line are al the figures that I personally put on.

Q. I want to call your attention to some of these contour lines. You observe this xrax one that runs here just above the mouth of the Y tunnel?

A. Yes, sir.

Q. What is the elevation of that line?

A. 1400 feet. That is the second one above the mouth of the tunnel.

Q. Is it 1400 or 1410?

A. The 1410 is the second one below Base Line.

Q. And this one that I now point at is marked 1390, isn't it?

A. Yes, sir.

Q. What is the difference in elevation between these contour lines ?

A. 20 feet between those two.

Q. I mean between each two of them?

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A. 10 feet.

Q. From 1390 the next one would be 1400?

A. Yes, sir.

Q. Now I call your attention to the mark of elevation at the mouth of the tunnel as 1364 feet. Isn't that a mistake?

A. No, sir. The cut in the mouth of the tunnel is nearly 20 feet below the ground.

Q. The 1390 contour that passes to the south of that tunnel has it an elevation greater than the elevation between the two contour lines?

A. These k elevations are the ground elevations, and the mouth is below the surface. The surface of the ground at the mouth of the tunnel is also given.

Q. 1364 represents the bottom--

A. The weir

Q. And is that at the mouth of the tunel?

A. Yes, sir. It might vary a few inches.

Q. That elevation 1364, between contour lines 1390 and 1400 does not mark the elevation of the surface of the ground?

A. No, sir. The elevation of the surface of the ground is given as 1384 feet.

Q. Even that still would be at a lower elevation than the contour line south of it at 1390?

A. No, sir; you have not followed the right line. If you will follow the right line you will find it north of the tunnel.

Q. It would be four feet higher at the mouth of the tunnel?

A. Yes, sir.

Q. Where is the east boundary line of section 4 on exhibit 2?

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A. It is the most westerly line as shown on the map. And the southwest corner of section 4 is shown on the map.

Q. I ask you where the easterly boundary of section 4 is on this exhibit 2?

A. It runs through the 526 acre tract from north to south and is marked with the corners at either end, section 4, and it runs just west of the reservoir.

Q. How much of section 3 is included in the 526.97 acre tract?

A. 22 1/2 chains wide and something in the neighborhood of 60 chains long.

Q. The tract next east of that line which you have indicated here, how is that marked at the corners.

Q. "Granite monument".

Q. The land east of the line that is extended north from the granite monument , what tract is that?

A. It belongs to the Cucamonga Vineyard Company till it reaches what is marked on this map as the Cucamonga Homestead Association 35 acres.

Q. And that Cucamonga Homestead Association 3500 acres, and this other tract which you say belongs to the vineyard Company that is all in section 3?

A. Yes, sir.

Q. Is the tract of land indicated on this exhibit 2 all within the Cucamonga ranch?

A. Yes, sir.

Q. Are the tracts indicated on exhibit 1 all within the Cucamonga ranch?

A. Yes, sir.

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Q. I see a number of marks on this exhibit 2, or names given, which I take it are the names of the varieties of grapes grown, Mission, Zinfandel, Malvoisie and Mission; those are the names of the kinds of grapes grown in the vineyard?

A. It is the names as given us at that time by Mr. Sommers. The lines are run out by ourselves to get the acreage, and he stated the quality of the vines.

Q. That is what those names represent?

A. Yes, sir. It represents the areas of that class of vines.

Q. The name itself is of a class of vines?

A. Yes, sir.

Q. I take it from the title of the map that all these lands lie south of the base line.

A. Yes, sir.

Q. And this Riche place is in section 4?

A. Yes, sir; it is.

Q. And is part of the 526.97 acre tract?

A. No, sir.

Q. It is no part of it?

A. No, sir; it is included in that 54 acres tract, that is the Cucamonga Vineyard Company's property.

Q. Now where is the Riche tract?

A. It is a small piece of land right west of the winery. It is a little whiter than the balance.

Q. Is it on the west of the east boundary of section 4.

A. Yes, sir.

Q Doesn't the 526.97 acres include all that lies west of that boundary of section 4 and extending to this broader line

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that you have marked here?

A. No, sir.

Q. Is the 526.97 acres bounded on the south by ~~the~~ this line?

A By the line adjoinig the reservoir.

Q. And not by the south boundary line of section 4?

A. No, sir.

Q. Where did you get the contour lines on these two maps?

A. I got them from the original map that exhibit number 2 was made from, from plane table work on the ground.

Q. And what was the original map made ~~for~~ for?

A. For the court in case number 5363 in San Bernardino County.

Q. Do you know what the title of the case was?

A. I do not, except that it was intended to be a partition among the Hellmans and the Childs and Downey people, and then they decided not to partition it afterwards after the map was made and the work was done.

Q. Who made the survey?

A. W. D. Nicholson.

Q. Do you know how he obtained the contour lines?

A. He had a man on the ground with a plane table.

Q. You didn't follow the government maps?

A. No, sir. There is a little piece of land to the west side of this exhibit number 2 that the contour lines look a little different from the other. That was made from a map made in 1899 by Mr. Skinner for the McPherson case as we call it.

Q. That is outside of the 526.97 acres tract?

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A. It just adjoins that.

Q. What tract is that?

A. It belongs mostly to the San Antonio Water Company, I suppose now, and some of it is part of the 90 acre tract, so called, in this case.

Q. Where is the balance of the 90 acre tract?

A. It would all be within this map if it was shown, but it is not contoured.

Q. The balance of the 90 acre tract, of the same width, is right south of where those hatchmxings stop?

A. No, sir. You can see it better on exhibit 1. The 90 acre tract is not quite a regular shape, it is an L shape.

Q. Where would those contour lines be on this map?

A. From there up.

Q. It would just take in the north part of the 90 acre tract?

A. Yes, sir.

Q. Now I see a mark on this exhibit a line which is designated as the "Lone Star Tunnel"?

A. That represents a tunnel line that was started in lot 6 of the Homestead tract and ran northwesterly, and we call it the Lone Star Tunnel.

Q. Was that used for the development and conducting of water

A. Yes, sir.

Q. From what?

A. Originally there was some water flowing out of the springs and it was to increase the body of water.

Q. What was that spring known as?

A. The Lone Star Spring?

Q. Where did that tunnel carry the water to? How far?

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A. It carried the water south and easterly for several of these 20 acre lots in section 3 and also in section 2 that were too high to irrigate from the Y tunnel water.

Q And it was not tunnel all the way?

A. This Lone Star Tunnel?

Q. Yes.

A. Oh, no. It was carried in pipes.

Q. Where did the tunnel terminate?

A. It is marked "Lone Star Weir in Sandbox". That was the mouth of the original tunnel.

Q. That is in lot 6 of some block in the Homestead Association tract?

A. Yes, sir.

Q. What conduit was used from the mouth of the tunnel to the place to which the water was conducted?

A. An iron pipe.

Q. Do you know what size?

A. I think it was a 4 inch pipe if I remember right, there was only asmall amount of water there originally.

Q. Is that pipe line depicted on exhibit 1.

A. I don't think.

Q. What is that line that connects with these circles from the mouth of the tunnel?

A. They are not placed to connect across the road by this map.

Q. You see here is the Lone Star weir. Right to the south east of that is a circle. What is that point-- or is that the weir itself?

A. I don't think that is marked anything. The weir is right

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where it is called.

Q. What are these words here?

A. "Granite onument." It refers to the corner of the 35 acre tract.

Q. That line is extended on down here and connects with another marked "Elevation 1375" and the upper line and 1357 below.

A. That is well 6. That refers to the number of a well within the 35 acre tract , by N. W. Stowell.

Q. Are the waters conducted through that same pipe?

A. No, sir.

Q. What are they conducted through?

A. Throught a tunnel, the mouth of which was clear down on Hellman avenue near the center of section 3.

Q. What was that tunnel known as? Was that tunnel number 3 spoken of here?

A. I don't think.

Q. Did it have any designation?

A. We call it the Stowell tunnel.

Q. Do you know when that was constructed, or dug or excavated?

A. It was started in 1898, if I remember right.

Q. Then from the point that I last noted there is another well marked what?

A. Well 8.

Q. What does that mean?

A. That is another well on that 35 acre tract and they were connected together with a tunnel.

Q. What does the 8 signify?

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A. It was his way of numbering-- Stowell.

Q. An arbitrary designation?

A. Yes, sir.

Q. Was there any water taken from that well?

A. Yes, sir. Whatever water flowed from that well came out of this same tunnel and came out on Hellman avenue near section 3.

Q. Did the tunnel extend up to it?

A. The tunnel extended to the well, and I think a cement pipe was laid in the tunnel.

Q. Did it extend to both of those wells?

A. Yes, sir.

Q. And any further?

A. Yes, sir.

Q. How far?

A. At that time, or now, do you mean?

Q. At that time?

A. It extended up then probably kone or two or three hundred feet below the base line

Q. And what did it connect with there, or did it connect with anything?

A. Nothing at all.

Q. Now, that is well 8, the line appears to be extended down as well as I can make out, to the point where I am now pointing. There is a designation of what?

A. A shaft.

Q. What shaft?

A. It was a shaft sunk in the tunnel for the purpose of digging the tunnel, taking out dirt, and excavating the tunnel.

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Q. It was on the line of the tunnel?

A. Yes, sir.

Q. And then there is another circle southeast of that a little distance? Is th t another shaft?

A.Yes, sir.

Q. And the next one is down at well number 6, and the division box is noted there?

A. That is not correct. Weir number 6 is at the division box but it is not connected or intended to be connected with that line that came down to the Hellman avenue. That was originally a division box for the 16 inch pipe line from the Y tunnel.

Q. Take this well number 6; was the tunnel still used down to that point?

A. The Stowell tunnel?

Q. Yes.

A. Yes, sir.

Q. Where was the pipe connected with the Stowell tunnel and what pipe was it?

A. The 16 inch pipe line was not connected with the Stowell tunnel.

Q. Was there any pipe line?

A. There was a pipe line laid in the tunnel all the way down to bring the water out on Hellman avenue on section 3.

Q. Did the tunnel extend down there?

A. Yes, sir.

Q. So that the water was diverted from that pipe line or that tunnel down here on section 3?

A. Yes, sir.

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Q. At the place marked what?

A. Old Settlers' sand box.

Q. And those waters that came from the wells through this tunnel and to that sand box did not commingle with the waters of the 16 inch pipe coming from the Y tunnel?

A. There might have been for a short time some raised by a pump at thids division box that I marked on the map, but it was only a short time.

Q. That is, well number 6?

A. Weir number 6.

Q. It may have been raised there by pump?

A. It may have been in 1901 and 2 ~~fax xxlxIxkxxwif~~ at all.

Q. That was only temporary if at all?

A. That is all.

Q. With that possible exceptions, the wat rs of the t o pipes were not commingled?

A. They were not, except at that point.

Q. Now, north of base line there is a place marked here "well 6, 1897, elevation 1257" or 1457, which is it?

A. 1457.

Q And in lot 11 of the same block of the Homestead Association tract. What well was that?

A. That was the most westerly of the Cucamonga Water Company's wells.

Q. That was done by the Cucamonga Water C mpany?

A. Yes, sir.

Q. And the water from that well was conducted in the Lone Star tunnel?

A. Yes, sir; and delivere d on the surface in an iron pipe

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at weir number 5.

Q. And thence where did that iron pipe go?

A. It went off easterly to cover the north part of section 3 and 2.

Q. Were they ever used any where else to your knowledge?

A. Not to my knowledge.

Q. Continued to be so used up to this time?

A. There has been no water there to use for some time except when pumped.

Q. About how many years has that been the case?

A. I cannot answer accurately , but about 5 years I think.

Q. Has it been pumped at any time since the waters have fallen below the surffface.

A. Yes, sir.

Q. What use was made of the pumped water? Where was it taken to?

A. I presume for the same purposes, but the last 3 or 4 years I have not been so familiar with the uses of the water.

Q. So long as you were familiar that was the use that was made of it?

A Yes, sir.

Q. We come now to another well marked well 5 along the line of this Lone Star tunnel. By whom was that well sunk?

A. Cucamonga Water Company

Q. And when? 1897? Was that intended to be the date?

A. Yes, sir; that is intended t be the date.

Q. And how were the waters of that well conducted to the place of use.

A. Just the same as the other waters; the same pipe and

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measured over the same weir.

Q. And did they go through the same tunnel?

A. Yes, sir.

Q. Further down to the southeast there is a weir number 5. That is the place where the waters emerge from the tunnel and went into the pipe line?

A. Into the measuring box and from there into the pipe line.

Q. You see the word weir occurs twice; weir number 5, Lone Star weir and sandbox. Right below it is 1380, and, as I read it, 55?

A. 1385.15. That means the elevation of the weir.

Q. Does that mark the same spot?

A. Yes, sir.

Q This circle where the granite monument is has nothing to do with that weir?

A. No, sir.

Q. I see a place marked reservoir 1. What reservoir was that

A. That was the first reservoir, built in '86, probably by the Cucamonga Fruit Land Company . But it is now owned and has been for 20 years past by the Cucamonga Water Company .

Q. W ere is that reservoir filled? From what source?

MR BRITT. We hhave no objection to proceeding with this historical knowledge and information, but Mr. Wright is going to be her right along, and there are several witnesses who come from some distances and who don't want to be here right along; and this testimony is not proper cross examination. Anything connected with the features depicted on the map, so far as their location on the ground, is cross examin tion; but the history of these things is not cross examination. They

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can have Mr. Wright later if they desire.

MR. CHAPMAN. The place is marked "Reservoir number 1", and I desire to get themeaning of it .

MR. BRITT. He told when it was constructed and now the inquiry is where did the water come from. We did not ask where the water came from to supply any of these water manifestations or water receptacles.

THE COURT. I suppose the objection is well taken. His examination in chief was merely the designation of the the things on the map.

MR. CHAPMAN. The only difference is that I have not understood that cross examinations were confined simply to the language which the examiner in chief chooses to use, because he says this is reservoir number 1. I think that what connection it has with the water system and the use of water from the various sources which this map is supposed to acquaint us with, is a part of the knowledge of the reservoir itself, whether it is a hole in the ground used for nothing or whether it is a place where water is collected for use, and whence it ~~xxxx~~ comes is as important to know as to what figure it is cutting in the system itself and on this map.

MR. BRITT. Suppose Judhe Chapman should say where does the water come fro to form these cienegas. That would be the same thing. I make the objection solely because Mr. Wright will be here and the can have him recalled at any time afterwards. We expect to examine him about these things.

MR. CHAPMAN. That is an objections that is not an objection, but simply a request for the suspension of the cross edxamination of the witness for the convenience of counsel; and if

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that is what he desires, I am willing to sustain it. But I do think he has an idea of cross examination that is exceedingly narrow; that he imagines that by simply choosing his language and asking witnesses questions he shuts out and precludes all inquiry into anything else connected with the subject matter to which the witness has testified. I have no objection to deferring the cross examination of Mr. Wright on these maps further till such a time as better suits his convenience. But when witnesses testify with reference to this map they certainly will have something to say in regard to the use of these things, if they have anything to say in this case.

--o--

W. J. KINCAID.

W. J. KINCAID, a witness produced by plaintiffs, being first duly sworn, testified as follows:-

DIRECT EXAMINATION.

MR. WATERS. Q. Please state your name.

A. W. J. Kincaid.

Q. What is your age?

A. 44.

Q. And your occupation?

A. Rancher.

Q. When did you first come to that place situated in the county of San Bernardino called Cucamonga?

A. 1865.

Q. How old were you then?

A. 2 years old.

Q. How long have you been familiar with that place called Cucamonga.

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A. Ever since that time.

Q. And during what part of that time since you went there have you resided at that place?

A. Ever since. I will qualify that by saying that we lived in the San Antonio canyon fro '65 to '82 but we clalled that Cucamonga just the same. Our post-office was at Cucamonga and we always called it Cucamonga.

Q. Where was the postoffice first located at Cucamonga when you first knew it?

A. At Riche store in Cucamonga.

Q. That i the place you have heard referred to here by various witnesses as Riches'?

A. Yes, sir.

Q. Did you go to school in that settlement?

A. I commenced going to school in the early seventies at Cucamonga.

Q. Where was the school house?

A. They taught school in what was the old brick block there; the first school.

Q. Is that the one situated due north of the vineyard?

A. We call it the hotel there now. It has been called the brick hotel.

Q. And the school was in that building?

A. Yes, sir.

Q. And did you attend that school?

A. Yes, sir.

Q. During what years was it that you attended that school at Cucamonga?

A. I think I commenced going to school there about '72. From

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'72 I think I attended school there till '78.

Q. How far back does your first remembrance go of the stream called Cucamonga Creek or stream-- the one which issues from the srpings or marshes situated to the north of the winery?

A. I should say that my memory seems to lead me away back to the early seventies. But if I was going to place the date I should say '74. I can remember very distinctly things that actually occurred in '74.

Q. Now describe the locality of the head or upper sources upon the surface of the stream issuing from the Cucamonga Spring. Where did the stream head?

A. On which side of the hill?

Q. I am talking now about the east side.

A. The Cucamonga creek in the foot of the Cucamonga Springs on the east side-- I should say the extreme north boundary would be 500 feet south of base line.

Q. What physical marks indicative of the presence of moisture and water was thereupon the surface at about the head of that stream?

A. In the creek in the extreme north it was indicated by black alders and willows and sycamores.

Q. Now the small vegetation. What was there.

A. After you came down the stream a ways it spread out and then we found tules, swamp land, wild grape vines and every thing that you find growing in a regular tule or marshy swamp.

Q. How was it with reference to the boggyness of the ground?

A. Oh, there is places in the springs that you couldn't possibly get through. Horses would bog down; cattle would bog down in the mire.

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Q. Did you ever walk across that bog or into the bog ?

A. Oh, yes; yes, sir.

Q. What did you observe with reference to the spongyness of the surface?

A. When you got around those bogs, especially where it was so wet, it would be springy.

Q. You could shake it?

A. Yes; it seemed to be peat land.

Q. Now then, coming along down from the head of the stream --up at its head was it small?

A. Yes, sir.

Q. How with respect to following along down the stream was it, with respect to tributary water coming in from the sides?

A. It would keep increasing as it came down. The water increased very fast.

Q. What in the immediate bed of the stream , after it got to have a bed-- what marked the bed, whether it was mucky or very gravelly and sandy?

A. It was a wash when it got to where the water accumulated.

Q. And consisted of what?

A. Boulders and rock. It is a regular continuation of the Cucamonga Canyon wash.

Q. Then as you passed along down, coming along down the creek-- I suppose you have gone up and down?

A. Oh, yes; I fished in it.

Q. You say you found there boulders and small wash stones ?

A. Yes, sir.

Q. And gravel?

A. Yes, sir.

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Q. And sand?
A. Yes, sir.
Q And a depression?
A. Yes, sir.
Q. In which the water drained from the surrounding marshy country.
A. Yes, sir.
Q. Now then, you say up at the end or head there was black alders and willows.
A. Yes, sir.
Q. And as you came along down what was the growth?
A. The black alders continued all the way down to where we took the waterout of the creek.
Q. Let's not get down that far. This stream from its head down to some certain point that I understand you to say was a making or increasing volume of naturally flowing water in a defined channel and having a defined bed and banks?
A. Yes, sir.
Q Now, then, down how far and to what point was it such a making and increasing surface natural stream of water?
A. Down to the southeast corner of the springs. That is where we took out the water.
Q. Do you mean to say at the southeast corner of the piece of ground that was marshy and springy?
A. Yes, sir; the last water that came in from the springs.
Q. Southeast or southwest?
A. It would be southeast.
Q. From that point up to the source or head of the creek there was boggy ground?

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A. Yes, sir.
Q. Now was the main body of that boggy ground lying to the east or west of the channel of the stream or did the main body of it lie to the west, or was the bed and channel in the middle of it?
A. The main channel was really in the middle of the springs. I should say so. Just about the middle. Springs on both sides.
Q. Now then, in this bed or channel whorethe water flowed from the head of the stream , down to where do you say, the southeasterly or southerly side of the marshy ground,-- in that limit now i n the bed of the creek was it of absolutely a uniform width or did it have a varying width and depth?
A. It varied.
Q. Washing into holes and pots?
A. Yes, sir.
Q. Was this a stream which flowed at all seasons of the year?
A. Yes, sir.
Q. Was this a stream which flowed continually all the years?
A. Yes, sir.
Q What life existed in that stream if any?
A. There was mountain trout in it.
Q. Did you ever fish the stream?
A. Yes, sir.
Q. Did you catch the trout.
A. Yes, sir.
Q. More than one year?
A. I think during the time I went to school we fished quite frequeltly.

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Q. During how many years did you fish there?
A. Oh, I should say 2 or 4 .
Q. What years would they be.
A. I should think from '74 or '73 to about '77 or '78.
Q. Did you merely find little minnow sized trout or what sized?
A. I think the largest fish that I ever caught there was about 14 inches long.
Q. What was the size of the trees-- these black alders that grew up and down the creek?
A. Some would be 2 or 3 feet in diameter.
Q. And the willow trees, what size would they attain?
A. Oh, a good sized tree; probably a foot thick was the largest, probably.
Q. Were there any sycamores?
A. Yes, sir.
Q. What size did they have?
A. They got to be very large, some of them; I should think some of them would be 4 feet in diameter.
Q. I understood you to say there were wild grape vines growing there?
A. Yes, sir.
Q. To what length would those vines grow?
A. They would tower to the height of some of those sycamores.
Q. They would grow up in some of the trees?
A. Yes, sir.
Q. In a wild shape?
A. Yes, sir; to the height of some of those trees.
Q. With respect now to the way these trees were situated one

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to another, that is to say t e thickness of the growth, did it make a shade? Did it shade the bed of the stream?

A There was parts of it you cou dn't get through.

Q. It was so dense?

A. Yes, sir.

Q. Have you at all become familiar with estimating or gauging the size of a stream with respect to the quantity of water flowing in inches measured under a four inch pressure.

A. I think I have.

Q. Now then, from your memory as to the size of that stream, when you fished in it at the time you first knew it down to any other date w en it was still the same, what, would you say, was the quantity of water which usually flowed in that wa ter course which you have described?

A. Up to what time?

Q. If there was a time when it had an average and constant flow, during the time it had such a constant flow, and you can ~~xix~~ name the time yourself as well as the amount of the constant flow?

A. Well, up to '85 or '86 I should say it would flow on an average 150 to 200 inches.

Q Then from '85 down to any other period when it had a constant flow?

A. I should say it flowed from '86 to '98 150 inches.

Q. Now, was the stream at any period an absolute, fixed, unvarying quantity?

A. Oh, no. Different seasons of the year there would be more water.

Q. Then theso estimates which you are m king from memory

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are for what season of the year?

A. Summer time.

Q. From the last period that you have named on for some other period, if there has been a change, give the next stage and then the next, if there has been other changes. You have given as late as 1898?

A. Yes, sir.

Q. Proceed.

A. From '98 to 1902 it diminished down to about 40 inches.

A. And from 1902 to some other period what was it?

A. From 1902 to the spring of 1903 or fall of 1903 I think it got down as low as 4 inches.

Q. And from that period down from the fall of 1903 to some other period?

A. It has never got any lower than that.

Q. Did it remain so low?

A. It remained that way for bout a year, I think-- let me see; 1903 to 2 years ago I think it remained about the same. It would vary a little in the winter time, but there was practically no water there.

Q. Now sir, the first period you have named was from what year to what year?

A. I fixed the date from '74 to '86.

Q. And then from '86 to '98?

A. Yes, sir.

Q. And thence on. Now, co-incident with the variation which occurred in '86 and continuing down to 1898, what else occurred or happened in the neighborhood of the sources of the creek relative to water diversion, surface or subsurface?

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A. Up to 1898?

Q. Say between '86 and '98. I understand you to say there was a change in the stream after that.

A. Yes, sir; after that.

Q. From '86 to '98. I understand you to say from '74 to '86 there was one condition?

A. Yes, sir.

Q. Now, I will ask you this question; during that period of time was there anything which happened relative to the water diversion there in the neighborhood of this creek or its tributaries to affect it?

A. No.

Q. Now then, from '86 down to '98, was there anything happening co-incident with changes in the stream or not?

A. Yes. There was a Y shaped tunnel built and the Haskell well was in operation and some wells along the line of Sixteenth street.

Q. Then, co-incident with the change in the quantity of water flowing in the creek-- in the water course-- beginning with '98, down to the end of that period, beginning then, what physical facts happened about the stream or a out its head having to do with the taking of surface porsubsurface water?

MR. CHAPMAN. Are you asking the opinion of the witness?

MR. WATERS. No sir. I am asking for facts. And this witness won't give you any opinion either.

A. The Haskell well was lowered-- the development of the Haskell well and the pumping of the Haskell well and the increased number of wells along the line of Sixteenth street

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and also the cutting of wells and tapping of wells in the tunnel on the west side happened.

Q. Those things happened during this period?

A. Yes, sir.

Q. As these things happened during this period what did you observe as also happening in the marshy land and to the vegetation and trees and timber theretofore existing upon the marshy lands lying along and adjacent to this natural water course that you have described?

A. They are practically all, dead.

Q. Did they die co-indident with the happening of these other events? Did that line of timber upon the banks of that stream ever die before within your knowledge or during the time you have been acquainted with the country there?

A. No, sir.

Q. Have you been familiar with the use of water of that stream by the people called the Old Settlers?

A. Yes, sir.

Q. As you first knew the aqueduct diverting the water of this water course, what kind or style of an aqueduct was it?

A. An earthen ditch.

Q. What was the first change from the earthen ditch?

A. A flume?

Q. What kind of a flume?

A. V. Shape.

Q And it extended from where to where.

A. It extended from where the water was diverted from the creek down to the colony lands.

Q. What lands do you mean by the expression "Colony lands."

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A. Well, I should say the lands that were settled by the old settlers.

Q. Did that flume extend to as far as the brick house-- the brick hotel?

A. Originally , the very first flume that was put in would be fluming it from the wash into a division box, and from there it was run in an open ditch for a number of years. After that it has been flumed from that point on down to the Colony lands.

Q. When you first knew that section of the country and when you were old enough to observe it and to remember , what, in the first place, constituted the irrigated land at Cucamonga?

A. The Cucamonga Vineyard Company was the first signs of any water being used.

Q. Do you mean the Cucamonga Vineyard Company or do you mean the Cuc monga Vineyard?

A. The Cucamonga Vineyard.

Q. Then the water was used on the Cucamonga Vineyard that you first remember.

A. Yes, sir.

Q. Now then, what use of the water at that place next supplemented or was added to the vineyard use?

A. The Old Settlers.

Q The aggregation of people now called the Old Settlers?

A. Yes, sir.

Q. These people whom you callss as the Old Settlers consisted of what? Were they stock men?

A. No. Farmers and ranchers.

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Q. Did they begin to use water immediately upon their settlement there?

A. Yes, sir; immediately upon their settlement.

Q. Did they enter into possession of the lands?

A. Yes, sir.

Q. In about what quantities to each?

A. From 10 to 40 acres.

Q. And in what industry did they engage?

A. Principally in fruit and vines.

Q. Were the orchards already set out and the vineyards already set out and they bought them from some one or did they buy the raw land and set out the orchards?

A. They bought the raw lands and set out the orchards and vineyards~~x xxxx~~ themselves.

Here the court takes a recess until two o'clock.

Afternoon session.

MR. WATERS. Q. Describe the extent of improvement in the way of habitations and of orchards and vineyards, and the appearance of the landscape at and about this place Cucamonga up to the time when this colonization or settlement was made.

A. Commencing from where we lived in the San Antonio canyon and coming down to the Cucamonga postoiffice the first thing that we came to was what we called the Rubottom station which was on the west side of the Red Hill on the San Bernardino road The next thing that we would come to would be Riches' store. That was the old stage station. The next thing would be the Cucamonga ~~Xxxxxxxx~~winery., and a little adobe house that was set in front of it; and in front of the winery and this little

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adobe dwelling house, I think it was used for at that time, was a walnut orchard; and from there on to San Bernardino on San Bernardino road was a desert.

Q. No other planting or cultivation or anything about there except what you have described?

A. Immediately north of the wine cellar and the vineyard probably a quarter of a mile, was what was then called the Carrillo ~~Sixtixx~~ residence.

Q. And that consisted of what?

A. A brick block?

Q What is it known as now--

A. And just opposite the brick block was then an additional wine cellar made of brick too, and the old wine cellar north there is called the Mountain View Hotel and the other building we ~~xk~~ call the brick block.

Q. Was there an orchard there of some sort?

A. Yes, sir; there was a few walnut trees and a few old seedling orange trees around the house.

Q. With the exception of those things which you have described in the way of works by man, were there any other works of man there about the place?

A. No, sir.

Q When these settlers came and bought as you have described did they at once go into the occupation of the respective tracts which they acquired?

A. Yes, sir.

Q. And built houses?

A. Yes, sir.

Q. And set out orchards and vineyards?

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Yes, sir.

Q. Did they make any aqueduct?

A. As I have stated before, they made an earthen ditch from the springs to their lands.

Q. And where was the water taken out?

A. It was taken out of Cucamonga Creek just west of the hotel and a little bit north of the Carrillo house. We call it the hotel now.

Q. It was what was then the Carrillo house?

A. The Carrillo house is just opposite; there was a lane between the two places; the wine cellar was across the lane, and the residence set back-- the wine cellar was on the west side of the alley and the residence on the east side of the alley.

Q. The intake of the ditch at the stream was a point in what direction from these houses?

A. A little bit west and north?

Q. At the Creek?

A. Yes, sir.

Q. Did the people all buy and come in there at once in a body, or did they come in gradually one at a time?

A. They came in gradualy, one at a time.

Q. Can you give us a list of those people?

A. You want a list of the old settlers now?

Q. Yes, sir; we will identify them by the places rather than-- we will take the places as a key and get at their names.

A. I am going to give you who comprises the Old Settlers Water Company. That is what you want?

Q. Yes, sir.

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A. John Maddock; the Kincaid estate.

Q. That is represented in the watercompany by what persons as stock holders.

A. I think it is in the name of Mrs. M. J. Kincaid.

Q. Proceed.

A. F. C. Nichols; Abe Miller; The Feron place. That has changed recently and I don't know who owns it now. Next E. P. Norwood; next is the property known as Mrs. John Smith. That has recently changed hands.

Q. It don't make any difference about the change of hands.

Q. The C. D. Manchester place; the Denham 10 acres . It has been subdivided lately. And J. B. Fox.

Q. What place was that originally?

A. D. Moote. You may have it A . M. Southworth.

Q. That was the Southworth place you say?

A. Yes, sir; it was the Southworth place. It is J. B. Fox now.

Q. Was there a Moore place?

A. That is included in the Denham place. That has been subdivided.

Q. Was there a Davenport place.

A. I haven't got to that yet. Then the Hall place; the Davenport place; Mrs. Frank Smith; D. R. Kilbourne and the Wilkins lot.

Q. What was the Wilkins place originally called?

A. Horace Woods sold it to Wilkins.

Q. Was there a Thomas Cunning place?

A. That is part of the Denham lot.

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Q. How about the Stinchfield place?

A. The Stinchfield place was at one time known as the Hending place.

Q. Let us take the Kilbourne place; what was the acreage of that?

A. 40 acres.

Q. Kincaid?

A. 24 acres.

Q. Feron?

A. 20 acres.

Q. The F. G. Smith? place?

A. 20 acres

Q. The T. L. Hall place?

A. 10 acres.

Q. The E. P. Norwood place?

A. 20 acres.

Q. The John P. Kincaid place?

A. That is included in the estate of Kincaid. It is 5 acres now.

Q. Thomas Cunning?

A. That is in the Denham 10 acre lot; it was subdivided.

Q. Then the Southworth place?

A. 20 acres.

Q. What was all the Denham place?

A. 10 acres.

Q. 10 to start with?

A. Yes, sir.

Q. The A. W. Moore?

A. That was part of the Denham place.

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Q. Davenport?
A. 20 acres.
Q. The Elizabeth Smith?
A. 10 acres.
Q. John Maddock?
A. 20 acres.
Q. The S. M. Nichols?
A. 13 acres I think.
Q. The Manchester place?
A. 10 acres.
Q. The Stinchfield place?
A. 13 acres I think.
Q. Do you remember a time at which all of the lands embraced in those places which you have just now enumerated had become settled and occupied?
A. Yes, sir.
Q. Did some particular event happen?
A. Yes, sir.
Q. About what year was it that those places which you have enumerated had become settled and occupied?
A. I think the first settlement there was Norwood.
Q. At about what year?
A. I think along about '73 or '4.
Q. Now then ranging on from that time down, what time was it when you can say that these particular lands had become occupied, and some event happened which affected them all, if such an event did happen?
A. I think it would run downto about '80.
Q. Irrespective of the exact time when the event happened

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what event did happen by which you know that these places were all settled. I will put the question this way, at the risk of being a little leading; do you remember having heard about what time the stipulation was in the papers or deeds of these old settlers relative to the water and how much water they would use?

A. Yes, I recollect that.

Q. Do you recollect an occasion arising at some time with respect to a controversy that was brewing because of the uncertainty of that expression in the deeds as to water rights?

A. Yes, sir.

Q. Do you remember whether these lands were settled when that controversy arose?

A. Yes, sir.

Q. Were they settled?

A. Yes/

Q. At that time were these lands being irrigated, and if, so by what water?

A. By the water from the Cucamonga Springs.

Q. Carried out in the aqueduct that you have described?

A. Yes, sir.

Q. Then an earthen ditch?

A. Yes.

Q. Was there a change made in the aqueduct after that out of which they got their water to irrigate-- and improvement of any sort made?

A. There was a cement pipe line leading from the springs to the old settlers sand box.

Q. At what point?

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A. On Hellman Avenue.

Q. Did you ever see that division box?

A. Yes, sir.

Q. Describe it.

A. Simply a cement box in which the water flows into , and there is weirs placed in the cement box in which the water is divided.

Q. How.

A. By the weirs.

Q. Divided how?

A. So that the old settlers would get their entire amount of water 33 and a fraction inches of water.

Q. How was the box arranged with respect to what water would flow out of the bottom of the conduit?

A. All the waters except what belonged to the old settlers went through into a pipe line leading to the Water Company's system.

Q. How was the box afranged with respect to the fluctuation, as to whether the amount flowing to the old settlers was to fluctuate?

A. It was arranged so that the over plus should fluctuate.

Q. And the Old Settlers quantity remained a constant quantit,

A. Yes, sir.

Q. Are we to understand that of the quantity there flowing there would flow a constant stream of the amount going to the Old Settlers, and the overplus would go off into another conduit?

A. Yes, sir.

Q. Describe in a general way the extent to which the old

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Settlers or those farmers who are now using what you now call the Old Settlers turn of water-- the way in which they have used that water from the boginning, if you know?

A. They have used it for the irrigation of the different ranches.

Q. And those lands were devoted to the production and growth of fruit trees?

A. Yes, sir. Fruit trees nd vines and other far produce.

Q. Do you know, and if so state, whether the quantity of water so allotted and used by them was necessary to that extent?

A. Yes, sir.

Q. And whether it all has been used?

A. Yes, sir.

Q. Has that use been continuous every year?

A. Yes, sir.

Q. And continuous during every season of every year? That is, every irrigating season of every year?

A. Yes, sir.

Q. State whether that use has been under a claim of right and ownership?

A. Yes, sir.

Q. State whether it has been disputed or not?

A. It has never been disputed.

Q. Or interrupted?

A. Never has been interrupted.

Q. There has been a shortage, hasn't there?

A. Yes, sir.

Q. When?

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A. The first shortage that we perceptibly noticed or cared anything about was in 1902.

Q. The year 1902?

A. Yes, sir.

Q. The irrigating season of 1902?

A. Yes, sir.

Q. And that shortage begun when the water arrived at what state of lowness?

A. It got down to about 19 inches.

Q. Their aqueduct carries 33.84 inches?

A yes, sir.

Q. You say they had their full quota or complement of water up to what time?

A. I said practically all of it up to 1902.

Q. When there was any decrease below 33.84 inches there was a shortage?

A. Yes, sir.

Q. When did there occur a first shortage?

A. During the year 1902.

Q. And up to that time they had had their water?

A. Yes, sir.

Q. And the shortage occurring subsequent to that time is the one described by you heretofore in your testimony?

A. Yes, sir.

Q. Was this water used by these so called Old Settlers for other than irrigating purposes?

A. No, sir.

Q. Where did you get your domestic water?

A. They got it out of the same water.

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Q. Then they did use this same water for domestic uses?
A. Yes, sir.
Q. And for watering stock?
A. Yes, sir.
Q? In what kind of a way did they have it for domestic uses? By putting it in cisterns?
A. Cisterns.
Q. Each place would have a cistern for the storin of domestic water?
A. Yes, sir.
Q. How did they manage to use a stream of 33.84 inches of water on so many different farms as that? They wouldn't divide it up into that many heads and each one have a perpetual stream?
A. No, they ran it in one head.
Q. And they would rotate in the taking of the water?
A. Yes, sir.
Q. And each person's duration with his head or turn of this one head of water would be dependent on the amoutn of water that he owned?
A. Yes, sir.
Q. Mr. Kincaid, during some of the years that your testimony covers, you have been engaged in businessin that colony, have you not?
A. Yes, sir.
Q. In what business?
A. I was in the general merchandise business from '84 to '96
Q. And you have lived there ever since?
A. Yes, sir; where was your store?

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A. The store was on the corner of the San Bernardino road and Archibald avenue.

Q. Where would that be with reference to the winery?

A. Directly , east, about a mile.

Q. The use of the balance of the water of this stream over and above the 33.84 inches that went to the Old Settlers, where was that had an enjoyed and by whom?

A. I should like to ask where do you mean? After it got into the sand box on Hellman avenue or before?

Q. I am talking about the balance of the water of the creek wherever it was used.

A. Half of the water in that creek always went to the Cucamonga Vineyard Company .

Q. Went to the vineyard or the interests owning the vineyard

A. Yes, sir.

Q. What was that used for?

A. It was used on the Cucamonga Ranch or vineyard.

Q. Was it used for irrigation and domestic purposes?

A. yes, sir.

Q. And put to a useful purpose?

A. Yes, sir.

Q. On what lands?

A. On the Vineyard Company's lands.

Q? Now, the overplus of the other half, was that used for any useful purposes?

A. Yes, sir;

Q. What purpose?

A. It was turned into the system of the Cucamonga Water Company.

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Q. That was used for irrigation and domestic use?

A. Yes, sir.

Q. When you first went into that section of the country dis you know the Cucamonga Vineyard?

A. Yes, sir.

Q. Was it of considerable extent or little extent?

A. It was quite a vineyard in those days . I should judge 150 acres.

Q. Was it a vineyard consisting of old or young vines?

A. Old vines.

Q. About what apparent age?

A. 20 years, I should judge.

Q. Was there any orchard connected with the same tract ?

A. A gew walnut trees and a few orange trees.

Q. Now up about the Carrillo place; was there any irrigation up therr for any purpose, and if, so, what?

A. They had a few walnut trees on that place and a few orange trees also and I think they had a garden.

Q. Where was that with reference to the present reservoir?

A. The present reservoir is built, you might say, in the yard or in the lot occupied by the old Carrillo house, in the same lot.

Q. In the front yard?

A. Yes; you might say in the front yard.

Q. Do you remember where the garden was?

A. The garden was about where the reservoir is now.

Q. That was irrigated from the water of what stream?

A. From the Cucamonga Springs.

Q. Mr. Kincaid, beginnging at the place that you have

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described as being the head of the Cucamonga Springs stream-- the place which you have fixed as being 500 feet south of Base Line in the wash, did you ever go up that wash from the head of that stream-- up grade-- in the wash any distance?

A. I went down the wash from the head of it and went up from the mouth of it.

Q. You have described the place where the water came seeping out-- the place which you called the head of the Cucamonga Water Company?

A. Yes, sir.

Q. Now I am asking you if you have ever gone up that wash further up the grade toward the mountains?

A. Yes, sir.

Q. Describe what you found there?

A. In the summer time it was simply a dry wash leading up to the Cucamonga Canyon, and in the winter time the winter waters flow down to this wash in a regular defined channel.

Q. Then as the winter run-off was exhausted , what would be the condition of that wash?

A. It would be dry.

Q. As you went furtherup the canyon would you come to water in the wash?

A. Yes, sir.

Q. Now, then, in the ordinary summer time how far would you go from Base Line up that wash till yoj got to running water in that wash?

A. I think that water in the summer time was taken out up into the canyon. If it was left to run without being taken out in the early seventies it would probably run a mile below the

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mouth of the canyon.
Q. And then sink into the wash?
A. Yes, sir.
Q. The balance then, of the bed of the flood channel would be dry then down to the head of this creek that you have described?
A. Yes, sir.
BY MR. HASKELL:-
Q. Mr. Kincaid, when you first went to Cucamonga did you know the Matthew Turner place? Known as the Runwell place?
A. When I went to Cucamonga the Turner place was not there, but I remember it ever since the Turner place was first settled
Q. When was that?
A. I think in a out '73.
Q. What was the first place that was settled in Cucamonga by what was called the Old Settlers?
A. The Turner place.
Q. How large a tract of land is that?
A. 60 acres.
Q. Was there anything planted on that tract of land?
A. They immediately planted that place to trees and vines.
Q. Has it been irrigated since?
A. Yes, sir.
Q. From what source?
A. From the waters of Cucamonga Springs.
Q. And they irrigated continuously down to the time of shortage of water that you have been speaking of?
A. Yes, sir.
Q. Do you know about what proportion of the wateror about

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how many inches were used on that place?

A. It has a right to get an inch to 10 acres.

Q. Do you know the Edy Tunnel?

A. Yes, sir.

Q. Has the Cucamonga Water Company ever diverted any water from that tunnel that you know of?

A. To where?

Q. To be used in Cucamonga on these farming lands generally? Cucamonga covers all of the land with which the Cucamonga Water Company has anything to do?

A. Yes, sir.

Q. Did the Cucamonga Water Company take and divert through the Edy tunnel any waterfor irrigation?

A. Yes, sir.

Q. Does it do so now?

A. Yes, sir.

Q. When did they first begin to do that within your knowledge?

A. I would like to ask what you mean by diverting.

Q. I mean carrying of in conduits?

A. Yes.

Q. There is a tunnel there?

A. Yes.

Q And it has a cut at itsmouth where there is a division box ,

A. Yes, sir.

Q. Who else besides the Cucamonga Water Company diverted water there and conveyed it away.

A. The San Antonio Water Company.

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Q. Where did they carry it to?
A. Ontario?
Q. Do you know in what volume?
A. I think last year they had about 150 inches or a little more.
Q. That was in 1906, was it?
A. Yes, sir.
Q. Do you know what they had in 1905?
A. I can't say the different years.
Q. Had that amount of water been increasing in quantity as diverted by the San Antonio Water Company, if you know?
A. Not within the last year.
Q. When did they begin to divert it?
A. I don't know the exact year, but I should judge about '96, I should think.
Q. Do you mean the San Antonio Water Company?
A. I think there was some water taken off to the Ontario Colony as early as '96.
Q. Who by?
A. I think the first water was taken over there by N. W. Stowell.
Q. And not by the San Antonio Water Company?
A. I think the first water was taken there by him individually
Q. I am talking about the first time the Cucamonga Water Company took it? (San Antonio?)
A. I don't know the first year that they began to get any water there.
Q. It was xxx several years after that?
A. I rather think they began to take water there about '97.

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Q. And they have been taking water there ever since?
A. Yes, sir.
Q. Have you been inside of that tunnel?
A. Not very far.
Q. You don't know the composition of it?
A. No, sir.
Q. Do you know what is called the west side springs?
A. Yes, sir.
Q. The springs on the west side of the hill? Has that been known as part of the Cucamonga Springs?
MR. CHAPMAN. Objected to as irrelev nt, and immaterial. What is known as the Cucamonga Springs by theseplaintiffs and intervenors is defined by the pleadings.
THE COURT. It is defined as in section 4?
MR. HASKELL. Yes.
THE COURT. Any further than that?
MR. HASKELL. I think not.
MR. GREEG. It says in the center of section 4.
MR. HASKELL. I don't understand it to be defined except as water rising on section 4.
THE COURT. The objection is overruled. Defendant excepts.
A. Yes, sir.
Q For how long a time.
A. Ever since I can remember.
THE COURT. Q. Do you mean to say that the term Cucamonga Springs h s always been applied to the springs on both sides of the Red Mountain?
A. yes, sir.
Q. Doesthat include that Tiburcio Spring also?

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A. Yes, sir.

MR. HASKELL. Q. Now, Mr. Kincaid, if you will step here I will call your attention to plaintiffs' Exhibit 1 as it is called now. I will ask you if you recognize on this map any figure or coloring matter which represents in a general way the location of the Cucamonga Springs on the east side of what has been spoken of here as the Red Hill?

A. Yes, sir.

Q. Point it out?

A. This here.

Q Is this tree growth supposed to represent the cienegas, or the creeks with the running streams?

A. This is a cienega and this is the creek bottom.

Q. What you have called a representation of the cienega is marked with what kind of pencil mark?

A. It is short pen marking.

Q. With 3 or 4 marks together somewhat in the form of a dot

A. Yes, sir, representing a tree, I imagine?

Q. Now the other markings which you say represents the course of the flow of the Cucamonga Springs is in what kind of a marking?

A. I should say in a cloudy marking.

Q. Passing in a long irregular line through the cienega and as far north as what is marked on this map as the San Bernardino base line?

A. Yes, sir.

Q. Now on which side of that general line of stream is what has commonly been referred to as the Red Hill?

A. It is on the west side of that.

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Q. Where would be the crown point or highest point of that hill in regard to letters, if you see any, or figures, as near as you can tell in a general way? I don't ask you to be absolutely accurate ?

A. About wherethe dotting of that spring is.

Q. That would then be a little northeast of the letters marked "Gran Mon El 1277"?

A. Yes, sir.

Q You say that would be a out the highest point of that mountain?

A. About the highest point.

Q. Now, in reference to the highest point of that mountain, what is the formation of the mountain tending towards the west or towards or beyond the line here marked "Tunnel Number 2"?

A. The trend of the hill is slopwing gradually from the highest point to the tunnel.

Q. Now from that tunnel line still westward, is that a slope

A. No, sir;, it is level. It is a creek bottom.

Q. On the westerly portion of this map I see a circular oblon oblong-- rather an oblong figure with hatchings around it in ink; do you recognize that as representing anything?

A. It looks to me like it represents a little hill on that side.

Q. There is a little hill there?

A. Yes, sir.

Q. About how high above the surrounding plane is the highest point of tat hill as near as you can remember?

A. I should judge 60 feet.

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Q. Between that hill and the Red Hill or to the point where you say the Red Hill merges in the plane itself--

MR. CHAPMAN. He has never said that.

Q. I will ask you then, irrespective of these hills which you have described , what is the formation of the land between those hills?

A. It is a level bottom land with a creek wash, bordering the west edge of this hill this way.

MR. CHAPMA. Q. Will you just explain on your map? You have run your finger on it. Explain it so the reporter can get it in his notes. Over what country did you move your finger?

A. I would say it was indicated by these dotted lines-- hatchings--

Q. Clear up to the top?

A. Clear up to the top.

MR. HASKELL. Q. And those hatchings which you refer to are near but a li'tle westerly of the line marked tunnel number 2, aren't they?

A. That tunnel runs into that. I think that map indicates just where the tunnel does run.

Q. But those hatchings are westerly of a line marked tunnel number 2?

A. Yes, sir.

Q You said this space of ground between those hills was level; do youmean exactly that or sloping in some direction?

A. Sloping to the south.

Q. Rapidly, or what to the rod, if you know or can estimate?

A. I should judge 50 feet to the mile.

Q. Now, on the easterly side of the line marked on this map

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which you have referred to as the course of the Cucamonga Springs as it runs in a stream, are there any indications of Hill there?

A. On the east of that-- up here at the Y tunnel-- east of the Y tunnel there is a hill.

Q. Are there any hill formations or indications of hill formations between these springs and the Y tunnel?

A. Between the creek and the Y tunnel?

Q. Yes.

A. There is an elevation there; it is a little higher.

Q. If you were to stand on this high point as being the highest point of the Red Hill approximately, and were to look over the ground to determine in what direction the general course of these hills, including the Red Hill, trend, what would you say the general course of thosehills would be.

THE COURT. General course in what way?

MR. HASKELL. Either east or west, north or south, or what.

THE COURT. You mean the general course of the chain of hills?

A. They may be a little bit northeast and southwest, but they are practically-- the trend of them would be from south west to northeast.

Q. Now, as this ~~xxxxx~~ channel of the Cucamonga stream passing along as it is marked on this map, approaches Base Line, how is the general contour of the country there? Is it hilly or otherwise?

A It is rather rolling on Base Line.

Q. Is there ny rising ground on the easterly side of that channel, say five or six hundred feet south of Base Line.

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A. The ground is a little higher there. It is of a rolling nature along the Base Line there.

MR. WATERS. Don't the contours show those things more accurately than the witness would?

MR. HASKELL. Not necessarily.

CROSS EXAMINATION.

MR. CHAPMAN. Q. You say this tunnel number 2 as it is marked on the map crosses the hatchings?

A. It crosses it further up.

Q It crosses it further up on a line of the channel?

A. Yes, sir.

Q. On which side does it go?

A. In fact, up there, it divides; the main body crosses to the west.

Q. And then extends on th the westerly of these hatchings that mark the line of the Red Hill up north -- I am talking now only of the tunnel.

A. That tunnel crosses-- the creek really divides about where it crosses there. There is a little wash hugs the bank all the way up, while thereis another one runs off to the west--

Q. I am not talking about the creeks but the tunnel. I say the tunnel crosses these hatchings that are marked for the Red Hill?

A. yes, sir .

Q. Don't it in fact go through the Red Hill.

A. Yes, sir.

Q. And then the tunnel is extended up north and to the west of that red hill?

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A. Yes, sir.

Q. What do you understand these short markings in bunches that are made on this exhibit number 1 just west of the words or letters Sec and the figure 4, represent?

A. That represents the west cienega-- what we call the west side cienega.

Q. Did you mean that for the west cienega?

A. Yes, sir.

Q. To the east of these cienegas marked on section 4 and a little to the north there are marks . Do you say those are the indications of willow growth and tules and alders and timbers?

A. They indicate the tule growth in the swamp, moreparticular

Q. About where on Cucamonga creek were the willows and alders located?

A. Along the line of the main creek?

Q. Through the cienegas?

A. Yes, sir.

Q. About whereit is indicated on this map?

A. Yes, sir.

Q. How far above these cienegas is it to where the water originally rises, -- the waterof the Cucamonga creek in the Cucamonga Canyon?

MR. BRITT. Are you disitnguishing between what we have been calling the Cucamonga wash and the Cucamonga canyon in the mountains?

MR. CHAPMAN. The canyon in the mountains

Q. As I understood you to say in your direct examination some where about the base line up for a considerable distance

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the Cucamonga creek wash usually was dry in the summer time.
A. Yes, sir.
Q. That when you went further up the Cucamonga Canyon you came to where there is water again?
A. Yes, sir.
Q. That when you first knew that it wasnot diverted in the canyon at all but flowed in its natural course down in this wash if there was water enough?
A. Yes, sir.
Q. When did they first begin to divert that water in the Cucamonga canyon, the first waters that rose to form the Cucamonga creek?
A. A long while back.
Q. About how many years? Was it before '86?
A. Yes, ; that was before '80.
Q. About how long before? I am not asking you to be accurate?
A. Probably five years?
Q. That would take it back to '75. Now from that time to this has the water been continually used from the creek in the canyon for some purpose or in the canyon every time it was diverted?
A. Part of it.
Q. And for what?
A. Irrigation purposes.
Q. The otherpart was used for what?
A. Whatever they didn't use ran down the creek.
Q. Now from '74 down to '86 , as I understood your testimony, in our estimation the quantity of water that flowed

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on an average for those years down the Cucamonga stream in the summer time was from 150 to 200 inches?

A. Yes, sir.

Q. Did you mean to say that that occurred every year? Was there a difference in different years of the quantities that flowed down the stream?

A. When I said that I meant as an average.

Q. About what , according to your best recollection, was the amount that flowed down therein the summer time from from '72 to '86 at the lowest or smallest amount?

A. I don't believe I ever saw less than 150 inches.

Q. But there was a difference in different years?

A. Yes, sir.

Q. And from 1886 down to '98 was the same thing true? Was there a difference in different years in the amount that flowed down that stream?

A. Theremust have been. I was morefamiliar with it between '74 and '86 than I was from '86 to '98.

Q. In the summer time from '72 to '86 you think that you didn't see less than 150 inches flowing in the summer time?

A. No, sir;

Q. Did it get any lower in the months of September and October?

A. I don't think I ever saw it less than that.

Q. Were there fluctuations in the amount of waterflowing in the stream at different seasons in the same year?

A. In the winter time there would be more.

Q. And in the spring would therebe more than later in the summer.

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A. Yes, sir.

Q. About what months did the waters drop to their lowest stage?

A. About August.

Q. You think they were no lower in September than in August?

A. wo, I think August is about the dryest.

Q. When you observed that the waters flowing in one year were less than the year before, did you observe anything co-incident with that that might have some affect on the flow of the stream?

A. Between what years?

Q. Between any two years, when you noticed one year there would be moreand another less, did you observe any co-incident fact that might have had an influence on the water flowing?

A. I don't remember.

Q. Is the amount of rainfall constant in that section of the country or does that vary in different years?

A. It varies.

Q. And when there is a season of very small rainfall would you observe that therewas less water in the stream the followig summer?

A. Yes, sir.

Q. And in the flood season a greater quantity?

A. Yes, sir.

Q. Do you remember about how many years you went fishing in the stream?

A. I went fishing during my school days there, between the years '73 and '77.

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Q. 10 different years?

A. It would be about 4.

Q. Where did you go fishing generally. Mark what part of the stream.

A. In the Cucamonga Creek.

Q. Where abouts in the creek?

A. North of where it was taken out of the creek.

Q. And below the cienegas?

A. Below Base Line. It would be below Base Line.

Q. Have you fished there any since 1886?

A. No, sir.

Q. Have you ever seen any fish there since 1886?

A. Not in that stream.

Q. Did you catch fish every time you fished there?

A. Usually, yes, sir.

Q. We have got four seasons that you fished there, from '73 to '77. Did you catch them every time you were fishing?

A. I think I did?

Q. You are not sureof it? How many did you ever catch there at one fishing?

A. I don't remember catching more than 15 or 20.

Q. After 1886 or in 1886 did you know of any artificial work of development of water in the vicinity of those cienegas?

A. Yes, sir

Q. What was it?

A. About that time the Cucamonga Fruit Land Company commenced their developments, which consisted of developing the Y tunnel and the Edy tunnel on the west of the Red Hill.

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Q. Was that the first work the purpose of developing water in that section that you know of?

A. I say about that time.

Q. Do you know about when the Y tunnel was completed?

A. I don't know just when it was completed, and I might qualify that by saying that we completed the Y tunnel or done some work on it in 1900 .

Q. That was the last work on it that you know of?

A. Yes, sir.

Q. And before 1900 what was the last work done and when was the last work done?

A. I don't know.

Q Do you know whether there was any work done on the Y tunnel after '88 and before 1900?

A. I don't know that.

Q. When was the earthen ditch constructed by which the waters were diverted from the creek?

A. By the Old Settlers?

Q. Yes, sir.

A. I should judge that was constructed about '73. '72 or '3. I think that was about the time.

Q. And I understood you to say in your direct examination that that ditch was constructed from the cienega down. Did I misunderstand you?

A. I said it connected with the Cucamonga Creek.

Q. At what point?

A. At the southeast corner of the springs.

Q. That was how far above the present division box?

A.? Not over a hundred feet, I wouldn't think.

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Q. How long did you continue to use that ditch?

A. We put some flume into that ditch before '86, but after '86 we put in a cement pipe line.

Q. When did you construct a flume therre?

A. I don't know what year it was.

Q. Was it before the cement pipe that you put in?

A. Yes, sir.

Q. And when you used the flume did you use it only to the same extent that the ditch had been used or did it extend further?

A. About the same distance.

Q. And the cement pipe was put in in '86?

A. I think about that time.

Q. When was that contrivance of apparatus constructed for the division of the water so as to keep the water flowing for the Old Settlers at the constant quantity of 33.84 inches?

A. That was put in after the cement pipe line.

Q. Do you remember about how long afterwards?

A. I think it was put in immediately.

Q. How long did you continue to get the 33.8 inches of water from that division box to the Old Settlers.

A. Up to the time that it fell short. And that was 1902 I think.

Q. Did it fall short in 1903?

A. Yes, sir.

Q. How much?

A. 1902 we had about 19 or 20 inches. 1903 we had about 4 .

Q. And in 1904 how much?

A. I don't remember 1904.

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Q. In 1905?
A. I haven't paid any attention to it since then.
Q. In 1906.
A. I should say it was about the same, maybe 8 or 9 inches.
Q. How is it this year?
A. At the present time?
QA. Yes, sir.
A. I think about 20 inches.
Q You say the Cucamonga Water Company has diverted from the west side to this tunnel-- the Edy tunnel-- and used it at some place or another; where did the Cucamonga Water Company use that water?
A. On the Cucamonga lands.
Q. Does it use it itself or furnish it to other people to be used.
A. It furnishes it to its stockholders.
Q. Are those lands to which the Cucamonga Water Company distributed its water in the Cucamonga ranch?
A. I should say yes.
Q. What do you understand by the colony lands? What does that embrace?
A. When I spoke of the colony lands it is all the lands mapped out by the Cucamonga Fruit Land Company-- platted.
Q. Didn't that embrace lands south of the Cucamonga Ranch?
A. I understand the Cucamonga Ranch covers that whole territory.
Q. Do you know where the south boundary of the Cucamonga ranch is?
A. I wouldn't say just-- if you would ask me the general

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boundaries of the Cucamonga Fruit Land Company's land I might tell you.

Q. Well, the Cucamonga Fruit Land Company. It subdivided and laid off a tract of land, a part of it inside of the Cucamonga ranch and another part not?

A. I don't know all the lands that were originally included in the Cucamonga Ranch. The Ontario Colony as I understood it was at one time embodied in the Cucamonga Ranch.

Q. I am not talking about the Ontario Colony. You have spoken about the Colony lands and I am trying to get at what you mean is embraced by that term Colony lands?

A. All the lands of the Cucamonga Fruit Land Company.

Q. And I now ask you if all of the lands of the Cucamonga Fruit Land Company that it subdivided and parts of which were sold off and were in the Cucamonga Ranch?

A. Yes, sir.

Q. All of it?

A. Yes, sir. I think so. I will qualify my answer by saying I think so. They may have gotten something that was not inside of the ranch, but my understanding was that it was all inside.

Q. Are those lands that you now speak of as the colony lands a part of the lands which the Cucamonga Water Company has carried water to from the west side in this Edy tunnel, and there furnished it for purposes of irrigation?

A. Yes, sir.

Q. Thoselands which the Cucamonga Fruit Land Company laid out and subdivided and sold in part, at least, are the lands to which the water of that Edy tunnel as taken?

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A. Yes, sir.
Q. You wereinterested in the waters of that section?
A. Yes, sir.
Q. And you identified with the Old Settlers right of 33.84 inches.
A. Yes, sir.
Q. Now, does the Cucamonga Water Company deliver the water to the old settlers also?
A. At this time?
Q. Yes, sir.
A. No, sir.
Q. Has it been in the past?
A. Not since 1902.
Q. Up to that time did it?
A. I think so.
Q. Was that the time that the water from the east side fell below the 33 inchee?
A. Yes, sir.
Q. When it did that the Cucamonga Water Company had nothing to deliver?
A. They had nothing to deliver.
Q. To you, I mean. You are a stockholder in that company are you not?
A. Which Company do you refer to?
Q. The Cucamonga Water Company.
A. Yes, sir; I am a stockholder.
Q. Whenever the water fell to 33.84 inches from that source, or less, the old settlers, of whom you are one-- at least so far as the title to the land and water is concerned-- took it

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all.

A. Yes, sir.

Q. I understood you to say that the water which was brought down in that cement pipe from the creek and all its sources and the cienegas is divided into two parts of which the Vineyard Company has half and you Old Settlers and the Cucamonga Water Company the other half?

A. Yes, sir.

Q. So that it is only the surplus abovethe 33 1/3 inches after half is taken that the Cucamonga Water Company had the control and distribution of?

A. Yes, sir, qualifying that by saying that they controlled it till it came down to the sandbox. You know the Cucamonga Water Company handled that water till it came down to Hellman avenue in the sand box.

Q. What I really meant was that the rights to the use of that water are used among yourselves in this way; the Cucamonga Vineyard Company has one one-half, and the Old Settlers next take 33 1/3 inches?

A. Yes, sir.

Q. And if thereis anything over 33 1/3 inches of the other half the Cucamonga Company has the right to control it?

A. Yes, sir.

Q. So far as you are concerned, they only have the right to take it to the point of division?

A. Yes, sir.

Q. Now the part that belongs to the Cucamonga Vineyard Company, where does it divert from the stream?

A. The same place as the Cucamonga-- it is all diverted at the

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same place.

Q. But after it is divided how does the Cucamonga Vineyard Company conduct it to the place of use?

A. In a pipe line and reservoir.

Q. And that pipe line is not one in which you share the enjoyment? That is its own pipe line?

A. Yes, sir.

Q. That reservoir is what? Reservoir number 1?

A. That is the Vineyard Company's reservoir.

Q. Is it the same reservoir marked on this diagram as reservoir number 1-- on exhibit 1? On Exhibit 2 it is this square that is marked just east of a north and south east boundary line of section 4. Perhaps we can get at it better on this exhibit.

A. The Hellman reservoir is this reservoir here.

Q. That is, just at the southeast corner of section 4, isn't it? It is not marked Hellman reservoir?

A. No.

Q. Is that the one you have reference to?

A. Yes, sir; immediately north of the winery.

Q. That is the one to which the Vineyard Company conducts the water?

A. Yes, sir.

Q. And from there distributes it over the land that is irrigated from it?

A. Yes, sir.

Q. Where have you got water since 1902.

MR. WATERS. Objected to as not responsive to the direct exaination.

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Q. How have you gotten water since 1902?
MR. WATERS Objected to as not responsive.
THE COURT. TO what is that responsive.
MR. CHAPMAN. To the general subject of the use of that water in that section of country for irrigation.
MR. WATERS. I haven't gone into that.
MR. CHAPMAN. I know that. You haven't gone into anything on earth that might fall against you.
MR. WATERS. I raise the point that this is not responsive to the direct edxamination.
MR. CHAPMAN. We subject the question to the court ithout arguing it.
THE COURT. I don't think it is responsive, but the question is, after all, whether we want to waste time by being very rigid about the rules. But , however, the objection is made and I will have to sustain it. Defendant excepts.
Q. What did you mean by saying therehad been a shortage of water in 1902?
A. I meant we didn't get out 33 1/3 inches of water since 1902.
Q. From this particular source?
A. Yes, sir.
Q. The shortage was only in the supply of the Cucamonga creek as fed by the springs?
A. Q. Did the Old Settlers dig any wells in that section of the country?
MR. WATERS. Objected to as not responsive to the direct examination.
THE COURT. Sustained. Defendant excepts.

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Q. In response to the question put by counsel for plaintiff, Mr. Waters, you said, that co-incident with the diminution of the quantity of water flowing from this creek and into this division box you noticesd or observed certain otherfacts, did you not?

A. ves, sir.

Q. You enumerated among other facts the boring of some wells did you not?

A. Yes, sir.

Q. Did you name all of them?

A. I think I named them in a general way.

Q. Did you in a ny particular way?

A. No, I don't think I did.

Q. What were those facts that you observed? What wells did you know of that wereput down there during the time you have in your mind when you were answering Mr. Waters?

A. From '98 to 1902.

Q. Did you not say '96 to 1902 on your direct examination ?

A. No, I think it was '98.

Q. Well, did you enumerate those wells which you say were suhh about that time?

A. The Haskell well was developed and pumped very extensive9 ly?

Q. Is that the only one?

A. The Rubio well was being used. The wells on the line of Sixteenth street west of the Rubio wells were being used.

Q. What wells were they, more particularly defined?

A. There is a chain of wells along on Base Line there. I suppose they are owned by the San Antonio Water Company.

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And wells in the Edy tunnel were being developed at that time.

Q. Were there any other wells being pumped at that time?

A. North of these springs?

Q. Yes, sir.

A. Not that I know of.

Q. Any east of them?

A. Yes.

Q. Whereabouts were they?

A. They were over in what we call the Lone Star system.

Q. Who was pumping them?

A. The Cucamonga Water Company.

Q. Any others?

A. Still further east the Sunset Water Company was pumping.

Q. Any others?

A. No, not that I know of; I don't recall any.

Q. You don't know of the Old Settlers pumping any wells at the same time?

A. Not in 1902.

Q. Not till 1902?

A. The Old Settlers Water Company was not pumping any in 1902.

Q. The waters had begun diminishing in the creek before 1902, had they not?

A. The Old Settlers got their water up to 1902.

Q. So they didn't pump any?

A. No, sir; not the Old Settlers.

Q. Did the Old Settlers Wat r Company-- as a corporation?

A. No, sir; not up to 1902.

Q. When did they commence?

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A. 1903.

Q. Not before?

A? No, sir.

Q. Have they been pumping ever since?

A. They pump every summer.

Q. Where is the well situated in which they pump?

A West of Archibald avenue, about half mile south of Base Line.

Q. Is Archibald avenue marked on either of these exhibits?

A. This is Archibald avenue.

Q. Running north and South?

A. Yes, sir.

Q. That well was north or south of base line?

A. South.

THE COURT. Their well and the Lone Star Development are not the same?

A. No, sir.

Q. How many wells are there in the Lone Star development?

A. We are only pumping one.

MR. CHAPMAN. Q. Whom do you mean by "we".

A. The Cucamonga Water Company.

Q. That Lone Star tunnel and the whole system belongs to the Cucamonga Water Company?

A. Yes, sir.

Q. Do you know how much water is pumped or taken out of that Lone Star system?

A. No, I do not exactly.

Q. Do you know about how much is taken out of the well that the Old Settlers pumped?

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A. We pump about 30 inches.

Q. Is that water conducted to this same pipe that you used to divert the waters from the creek?

A. Yes, sir; it is connected with the same.

--o--

J. O. MARSH.

J.?O. MARSH, a witness produced by plaintiffs, being first duly sworn , testified as follows:-

DIRECT EXAMINATION.

MR. BRITT. Q. Your name is J. O. Marsh?

A. Yes, sir.

Q. You live in Los Angeles?

A. Yes, sir.

Q. What is your occupation and profession?

A. Civil engineer and surveyor.

Q. How long have you been engaged in the practice of that profession?

A. About 15 years.

Q. You understand the art and mystery of measuring water?

A. Yes, sir.

Q. Are you acquainted with the localitu known as the Cucamonga Springs in San Bernardino County?

A. Yes, sir.

Q. In the warly part of the year 1904 did you make any measurements of water in that neighborhood?

A. Yes, sir.

Q. Commencing in what month?

A. Commencing in January, until the early part of April.

Q. You see this long extended scroll here on the board?

A. Yes, sir.

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Q. Have you examinedit?

A. Yes, sir.

Q. Do you know whether it contains in tabulated form the results of measurements you made during those early months of 1904?

A. It begins with tham ; it contains much more.

Q. But it does contain that?

A. Yes, sir.

Q. At how many different places did you make measurements of water?

A. In the first 3 or 4 months of 1904, 10.

Q. And how are they designated on this tabulation?

A. Weirs numbers 1, 2, 3, 4, 4 a, 5 , 6, 7, and 8. There was one other weir that I took a measurement that does not appear in this tabulation called 8 a.

Q. Now this tabulation, aside from the description of the weirs, and some notes at the head, bears this inscription; Tabulation of measurements of water developed at Red Hill, Cucamonga, California. Did you measure a flow of water from the natural stream there?

A. Yes, sir.

Q. What was that?

A. What has been called the Cucamonga Creek?

Q. That is measured at what weir? What is the designation of the weir at which you made the measurement of water of that c reek?

A. number 8.

Q. It so appears on this t bulation?

A. Yes, sir.

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Q. Now, referring to this tabulation, the first column at the left is headed Name of Observer. J. O. Marsh appears there. That is yourself?

A. Yes, sir.

Q. And with a few exceptions, where the initials E. T. W. and J. O. M. appear in that column, it seems that the same observer made the notations, or , rather, the obeservations noted here down to what date? April 5th, 1904?

A. Yes, sir, down to and including April 5th.

Q. Who was designated by E. T. W.?

A. E. T. Wright.

Q. He made a few of those in conjunction with yourself?

A. Yes, sir.

Q. The next column shows the date of the obersvations?

A. Yes, sir.

Q. Then under the head of weir number 1, what does that indicate?

A. The amount of water in inches under a four inch pressure.

Q. In the second olumn , flowing at that weir number 1, on several occasions indicated--

A. In inches and decimals. That is, it is the miners inches accepted in this State.

Q. One fiftieth part of a cubic foot per second?

A. Yes, sir.

Q. And the other columns, in like manner reading toward the right indicate the flow of water similarly at the various weirs which are noted at the head of the several columns?

A. Yes, sir.

Q. At the top of this tabulation have you noted the places

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where the several weirs were situated ?

A. Yes, sir.

Q. Where was weir number 1?

A. It is at the mouth of the Edy tunnel or tunnel number 2, as it is more commonly called

Q. Is that shown on these exhibits numbers 1 and 2?

A. Yes, sir.

Q. And weir number 2 was situated where?

A A very short distance above weir number one.

Q. About how far distant from it?~~from tunnel number 2?~~

A.. About 15 feet.

Q. Where was weir number 3 situated?

A. That is a well called well number 10, probably 20 or 30 feet to the east of tunnel number 2, and pretty nearly the north side of the tract known as the 90 acre tract.

Q. Where is it called well number 10?

A. On Exhibit 1, it is marked Shaft, well 10.

Q Is that a dug well, or do you know anything about that?

A. It is a dug well down to the level of the tunnel. Below that it is a bored well-- a 12 inch well.

Q. Where is weir number 4?

A. Weir number 4 is on tunnel number 2, at the mouth of what is known a s tunnel number 6-- a lateral tunnel.

Q. Is it indicated on this map exhibit 1?

A. The weir is indicated but not the tunnel.

Q. How is the weir indicated on that exhibit 1?

A. It is marked weir number 4 , it is in the northwest corner of the 90 acre tract.

Q. And weir number 4 a is situated where?

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A. It is in the same sandbox as weir number 4, and measures the water which goes into tunnel number 2 from the San Antonio Water Company's development in that tunnel.

Q. What is the situation of weir number 5?

A. Weir number 5 is at the mouth of the upper Lone Star tunnel?

Q. Indicated on the map exhibit 1?

A. Yes, sir. As weir number 5, just north of the line in lot 6.

Q. Then weirs numbers 6 and 7, where are they situated?

A. Weir number 6 is on Hellman avenue near the southeast corner of what is known as the 35 acre tract.

Q. Indicated on map exhibit 1?

A. Indicated on the map as weir number 6. And weir number 7 is at the mouth of the lower Lone Star tunnel. It is on Hellman avenue about the center of section 3.

Q. How is it indicated on the map exhibit 1?

A. As near number -- wait a minute now. That is right. Weir number 7. But it is not marked here. There is an error in the notation of the weirs. This should not be weir number 8. That should be weir number 8 a. This is marked weir number 7; it is incorrectly marked.

Q. Mark it.

A. This should be weri 8 a. Weir number 7 is at the mouth of the Lone Star tunnel.

Q. On Hellman avenue?

A. Yes, sir; about the center of section 3.

Q. Weir number 8 is just south of what is known as the Mountain view hotel?

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Q. That is a new name for the hotel. Where is the mountain View Hotel with reference to the reservoir above the Cucamonga Vineyard tract?

A. It is about 300 feet northerly from it.

Q. Is that the same place referred to as the brick hotel?

A. Yes, sir.

Q. Are there any other weirs the flow over which is indicated on this tabulation? You have mentioned number 8?

A. No.

Q. I observe ~~there is no such weir number 8~~ with reference to this weir number 8, your measurements at weir number 8, which I understood you to say was arranged to measure the water and at which you did measure the water flowing from Cucamonga Creek and that for some time following the beginning of your measurements with reference to the flow of water , there is no flow of water at all in it for several days. The column is blank of measurement at that weir. Do you know the reasons for that?

A. At the time I was first on the land on January 22, 1904, I went to this weir, and finding no water, I made this notation: "Went up to find the cause of therebeing no water and found they were repairing the pipe line and had turned all of the waterinto the natural creek, and the men stated that it would be probably 3 or 4 days before any water was turned back". As a matter of fact it was longer.

Q. Now then, in this 5th c lumn of this tabulation, reading from the left, I notice the note at the head is "Total at mouth of tunnel number 2". What figures are the

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totals in that 5th column?

A. The measurements of weirs number 1 and number 2.

Q. Then the figures in that column show the total amount of water which at that time was flowing out of the point called the Edy tunnel or tunnel number 2?

A. Yes, sir.

Q You have made some pencil notations at the head of this tabulation which I wish you would explain. Read it first.

A. "Blank no observation".

Q. That is in one of these rectangular places on the tabulation across. It means there is no observation for that date at that place? I will [illegible] X

A. I will state at the time this was made I only made it down to and including April 5th, 1904, and below that was appended an explanation of the table. Later on it was deemed advisable to extend the tabulation and the notation was cut off and not put on again till this morning, and I put a very brief one on this morning to explain the characters used for brevity in the columns. A blank denoted no observation; the small circles as to the weir means no water; as to the wells it means not being pumped. A small cross means wells being pumped but no measurement taken.

Q. Now then, each of those weirs on this tabulation mentioned would have shown the flow from the well [illegible] at the head of tunnel number 2, a well which is called on this map exhibit 1 well number 14.

A. Weir 4 a.

Q. Was the water flowing from that well mixed with any other water before it reached the weir 4 a?

A. No, so far as I am informed. It couldn't have been unless

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there were some of the old wells flowing naturally.

Q? I notice that on this tabulation that the right hand portion of it and almost half of it is under the head of San Antonio Company's wells, and you have a notation at the head there number 1, number 2, number 3, number 4, number 5, number 7, number 8 and number 14, under the head of San Antonio Company's wells?

A. Those refer to a chain of wells that have been mentioned several times in this case as wells lying north of the San Bernardino Base Line. Those were numbered from the west toward the east.

Q. How about number 14?

A. Number 14 is the upper well on the Edy tunnel.

Q. The uppermost well on the Edy tunnel as marked on this map exhibit 1?

A. Yes, sir.

Q. To come back to your cross marks and your notation I notice in that column under the head of number 14 beneath the general caption San Antonio Wells, in that column under number 14 heere a series of those cross marks?

A. It means that I observed that the well was being pumped.

Q. How long did you continue to observe that the well was being pumped?

A. From January 21, up to and including February 16, 1904.

Q. Below that what are the marks in the same column ?

A. A small circle?

Q. What does that indicate?

A. That the well was not pumped.

Q. Were you observing it daily? During that period?

A. Very nearly-- on the dates shown in the diagram.

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Q. By the diagram you mean this tabulation to which I am directing your attention?

A Yes, sir.

Q. Did the no pumping condition continue down to the 5th of April which I believe is the last of your series of observations?

A. It did.

Q. Relative to the observations on the 16th of February, which is the last date when that well was being pumped, I will inquire whether your attention was attracted at that time to any circumstances concerning the flow of water over numbers 1 and number 2 as contrasted with the flow of water on the following day and days afterward?

A. I notice immediately that the water at Weir number 2, which I invariably reas first, had fallen off very perceptibly, reading some 35 inches less than it had on the previous day.

Q. And that faling off you noticed on the 17th day of February?

A. Yes, sir.

Q? What were the figuresin inches?

A. It was 333.7 on the 16th and 298 inches on the 17th.

Q. How was it on the 18th?

A. 301.

Q. How did it continue then for a few days afterwards?

A. Very much the same. The 19th was 299.3. The 20th, 294.6. 22nd, 298.6. 23rd, 297.4.

Q. During the time then that you continued your observations there did the water at that weir ever regain or ever rise again

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to the quantity which it flowed on the 16th of February--the last day of the pumping?

A. No, sir; the most it reaching at any succeeding time was 304.9 inches on the 29th of March , 1904..

Q. In the division of this taulation under the general caption "San Antonio Company's wells" umder the head of number 3, what was the first date of observation on those two wells?

A. January 29, 1904.

Q. And do those figures indicate the quantity of water then flow from the two wells numbers 3 and 4?

A. Yes, sir.

Q. What was the quantity?

A. 70.5 in well number 3, and 50.2 in well number 4.

Q. Then on the 30th of January what was the quantity in the two wells respectively.

A. 69.8 in number 3 and 42.3 in number 4. And on the 30th, it was 69.4 in number ~~4~~ 3 and number 4 was not being p umped.

Q. And the no pumping condition continued in those two wells as indicated in the columns down to March 4?

A. Yes, sir.

Q. After March 4, I notice it is blank. Does that indicate that you didn' observe?

A. I didn't observe, for the reason that I was ordered off of the ground.

Q. These observations weremade by yourself personally, weren't they.

A. They were.

Q. Do you know whether or not the results as you have

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stated, indicated in inches and so on, are correctly transcribed on this tabulation?

A. Yes, sir.

MR. BRITT. We offer in evidence the tabulation to which the attention of the witness has been directed, down to and inclusive of the 5th day of April, 1904, being the result of his personal work (Plaintiffs' Exhibit 3).

MR. HASKELL:- Q. You say you were ordered off of the ground Who ordered you off?

A. Representatives of the San Antonio Water Company.

CROSS EXAMINATION.

BY. MR. GREGG. Q. Who was he?

A. I don't know his name. He was the superintendent, I suppose, in charge of the pumps. He told me he had orders--

Q. Never mind. You don't know his name?

A. No, sir.

Q. I see you have one column here that is blank, with the heading "Cement shaft". To what does that refer?

A. I don't know , it is nothing that I had anything to do with. The first observation on that appears on July 26.

Q. And that observation was made by somebody else?

A. My connection ceased on April 5th.

Q. Do you know where that cement shaft is?

A. I have no idea.

Q. In regard to this Hellman well, where is that?

A. That is the wel at the upper end of the western branch of what is called the Y tunnel.

Q. That is at the place that is marked Hellman well number 2 on plaintiffs' Exhibit 1?

A. Yes, sir.

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Q I see there are many blanks in the columns that refer to the measurements of that well? Or were those-- what do those blanks indicate?

A. No observation was taken on that day.

Q. There is a well here-- west side well number 2, where was that well?

A. It is a well very nearly at the northerly line of the 90 acre tract, up on top of the hill marked artesian well number 2 on exhibit 1.

Q I see but very few obsesvations in regard to that. Take this observation upon February 23, and what is the amount of that?

A. That is not any amount of water. It is headed at the top of that measurement in feet below curbing.

Q. Measurement of what?

A. The levels of the waters.

Q. That is, from the surface of the ground?

A. From the top of the curbing of the well.

Q. Down to what?

A. Down to the surface of the water standing in the well.

Q. I notice under this column inches of rain, certain statements, who made those observations?

A. Those were copied from the report given by the Southern Pacific agent of his rain guage, the report that he makes to the government.

Q. The Southern Pacific agent where?

A. At Ontario?

Q. And how did you get those statements?

A. I copied his report. He was kind enough to let me copy

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his report before he sent it in.

Q. Commencing with these weirs number 1 and with the rest of the weirs, I wish you would give me the width of those weirs, taking them in order?

A. They are all measured in feet. Weir number 1 is 3.755. Number 2, 3.51. Number 3, 1.25. Number 4, 2.271. Up to January 22nd, after which it was widened to 2.50, up to March 2, after which a new weir was substituted which measured 3.845.

Q. Who made those changes in the weirs?

A. I did.

Q. Why did you do that?

A. When I first took up the work of measuring I found some of the weirs were not in very good shape. Number 4 was rather crudely made and leaked badly and so on, and I fixed it up and made my mind u p that I could get better results by truing it up. The sides were not true a d therefore I had to widen it and I made it an even 2 1/2 feet. Later on at the mouth of that so called tunnel number 6 the company put in a sand box, wher e weir number 4 is.

Q. What company?

[illegible]

A. The Cucamonga Water Company. And at the time of making that sandbox there was a weir put into the side of it which was made the same as all the other weirs with a sheet iron opening, and as soon as that was made that weir was used in place of the wooden one which had been in the tunnel. Weir number xQx4 a is 3.98. Weir number 5 is 2.49. So far all of these weirs had two end contractions. Weir 6 is 3.333 without end

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contractions. Weir 7 is 2.5 without end contractions. Weir 8 is 5.833 with two end contractions up to February 4, after which it was 1.667 with four end contractions. That sounds peculiar but it means that it was the sum of two weirs substituted for the weirs that were in ther in the first place, a weir making two openings.

Q. Why did you make that substitution?

A. Because the weir that wasput in thereoriginally was intended evidentely to measure a large body of water. It was a weir that had a half inch iron bar for the water to fall over; and the stream was so small that this wide weir afforded no means for accurate measurement as the water was without end contraction at all and the weir was nearly 6 feet in width when I went there and measured a volume of water of only about 12 inches, and I cut it down to 2 weirs, each 10 inches in width for the purpose of more accurate measuring. Weir number 8 a, is 1.406.

Q. And when you say 1.406 what do you ean by that?

A. As I said in the first place it is all in feet?

Q. You have here the days when you made these observations. Have you the times when you made the observations?

A. I have in my books.

Q. Without going into detail now, was there any time or any habitaual time that you made them?

A. Generally speaking, I had a certain round that I made which brought me to these different weirs at practically the same time of day each day. Occasionally because for some reason I would make my round in some other ways, I changed the time of day.

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Q. Describe that round? That is, tell us where you started out and when you started out?

A. Most any day would typical. I will take it at random. February 1st, I first measured weir number 1 at 8:30 A. M. Weir number at 8:45 A. M. ; weir number 3 at 9:30 ; A. M .: weir number 4, at 9:40 A. M.; I observed the San Antonio well number 3 at 10:10. I measured weir number 5 at 10:30; Weir number 6 on that day had no water. I measured weir number 7 at 11:40; there was no water at weir number 8.

Q. Now with regard to the memorandum that you made with reference to the pumping of the wells , do you know how continuously the wells were pumped each day? That is whether it was the full period or not? What was your method of taking these observations?

A. I only observed them as I drove by them. On all occasions where I drove by the same well twice I always noted and I never had found any case where the well had been pumped when I first observed it that it was not also being pumped at the next observation.

Q. By driving by twice , what do you mean?

A. Some times my work would cause me to have to drive back over it.

Q. You mean on the same day?

A. On the same day.

RE DIRECT EXAMINATION.

MR. BRITT. Q. About this Hellman well at the west branch of the Y tunnel was there any water flowing from th t at all during the time that you made these me surements?

A. No, sir.

Q. How did you make your measurements? What was your

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process of making observations on the well?

A. I went down the shaft to the bottom of the tunnel and there measured the distance from the top of the iron casing of the bored well to the surface of the water.

Q. In this tabulation which column shows the result of those measurements?

A. The third from the right hand side, marked "West Hellman Well". It is also marked "Measurements equal feet below casing".

Q. Then the figures in that column show the elevation of the water in the Hellman well below what point?

A. Below the top ofcc edge of the iron casing on the well.

Q. Was that iron casing in the tunnel or on the surface of the ground?

A. In the tunnel.

Q. A d what depth below the surface of the ground.

A. I never measured that depth, but I should judge it was approximately 30 feet.

Q. There was a shaft descending from the surface of the ground to the tunnel, immediately over the casing of this well?

A. Yes, sir. About a 5 by 5 shaft.

Q. You mean 5 feet square?

A. Yes, sir.

Q. And a ladder in that by which you descended?

A. Yes, sir.

Q. The top of the casing was situated on what level with reference to the bottom of the tunnel?

A. It was almost down in a hole in the bottom of the tunnel as I found it.

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Q. How much below the bottom of the tunnel?

A. A foot and a half.

Q. Was there any water at that time coming into the Y tunnel?

A. Not a bit.

Q. And it stood in the casing at the distance indicated in feet in the column to which I last directed your attention on this tabulation?

A. Yes, sir.

Q The next column to that on the right and the last column but one of the Ontario tabulation shows what?

A. An observation on the height of water on the west side wells number 2, which is the same well as indicated on plaintiffs' exhibit 1 as artesian well number 2.

Q. That shows the height of water below what point?

A. Below the top edge of the wood curbing.

Q. At the time you made these measurements at well number 8 or weir number -- and, by the way, I understand you to say that weir number 8 is the place where you measured the water of Cucamonga Creek?

A. Yes, sir.

Q. At those times was all the water of the creek measured over that weir?

A. Whenthere was any water going over the weir , it was all going over; there were times when all the watee was diverted into the creek and none going over the weir.

Q. Diverted into the creek or alowed to flow down a channel?

A. Yes, sir.

Q. At the time you measured, you measured all the natural flow of that creek?

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A Yes, sir.

Q. And the results are shown in that column under the head weir number 8?

A. Yes, sir.

Q. Did you at that time observe any cienegas in the creek above?

A. Yes, sir. I traveled all over what was called the xx cienegas.

Q. What was their condition then?

A. Perfectly dry. I observed a numb r of old channels that had been cut through them, old ditches, and lots of dead willos, and every evidence of their having been water there, in the condition of the soil. It was a very black soil, almost like peat, and it had every indication of having been the bed of a swamp at some time.

Q. Did you notice any dead tules?

A. No, sir. It had been burned over.

Q. I understood you to say that there was then no water flowing into or out of the Y tunnel?

A. None at all.

Q. Were those ditches connected in any way with the Y tunnel.

A. They were below the Y tunnel. And it was very apparent that they were for the purpose of collecting the water of the swamp when it was one , into one main channel, which was the outlet of the Y tunnel when it ran.

RE CROSS EXAMINATION.

MR. GREGG. Q. Mr. Marsh, you are speaking about your observations of th at cienega; now just what cienega is that you

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referred to.

A. The cienegas shown on plaintiffs' exhibit 1 as the most easterly one on section 4.

Q. By the most easterly one , could you define that some what more; is it this one marked China cienega?

A. That one, and the one north of it?

Q. In your observations there did you notice any cuts that had been made in that cienega -- any drains?

A. Yes; I just stated that I noticed a number of them constructed in the bed of it, all leading down to one main.

Q. When did you first see those cienegas?

A. I made no note of the time, but it must have been during the month of February. I made no note of the date. I merely took time one day when I was there to go all over them.

Q. That is, February, 1904,?

A. Yes, sir.

Q. When were you first ~~again~~ acquainted with this Red Hill country?

A. In the latter part of January 1904.

Q. That is the first time you have ever been there?

A. The first time I was ever on the ground.

Q. Can you describe those cuts, a little more definitely as to the depth and as to the width and as to the number? I am speaking now as to these two cienegas, the onne marked China cienega and the one immediately above it

A.

A. Beginning at the head of them -- that is, the upper end of any of them-- they were quite small; probably not over 2 feet in width and perhaps as deep; the direction of those that were on the east side of the main wash tended to the south west

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and those on the west side of the main wash t ended to the southeast, and they ran from that depth of 2 feet to a depth of 4 or 5 feet I should say. They were very much broken down. They had evidently been in disuse so long that they had crumbled and they showed evidences that when first dug they were in soil that would allow their being dug very square. Some places they were still in tact and the walls were perfectly vertical. I don't know how many there were, but I should think there were 6 or 8 of these lateral channels on either side of the main channel, but the main channel was a trifle larger. That was probably 8 feet in width, and the depth at the lower end 4 or 5 feet.

Q. Now coming to this wash that is immediately west of the wash marked China cienega and this other cienega that you have testified to, did you notice the bed of the creek in there?

A. Yes, sir.

Q. From there down to this place that is marked "head of a 30 inch pipe line"?

A. Yes, sir.

Q What did you notice in this wash and in the cienega as to any cuts or excavations or drains or mark of that character?

A. I never made any very extended investigation of that? I went up the wash as far as I could without getting into the brush which is probably about the low r ene of the cienega on the east side of the wash. Then I went up by a path through the weeds inthe cienega and I didn't observe any ditch es in there. Theremay have been some but there was a heavy

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growth of weeds and very little could be observed without a very closeinvestigation.

Q. Do you recall substantially para llel with the stream or close to the stream a very deep trench?

A. That is quite low down. There is one away down near the point where the Cucamonga Water Company, takes out their water that comes through weir number 8.

Q. I wish you would give us the dimensions and locality of that trench as well as you can?

A. The lower end of it was probably 300 feet or in that neighborhood above the old sandbox shown on this map at the junction of the four inch pipe line and the 30 inch cement pipe, and it runs in a nearly east and west direction, and it is probably 100 feet a length and it is from 4 to 6 feet in width and in the neighborhood of 4 feet in depth at the lower end and probably 8 or 10 feet in depth at the upper end.

Q Did you notice how the elevation of the floor of that trench at the upper part of it compared with the elevation of the wash on the surface of the ground immediately adjacent?

A. I didn't take any level on it, but I should think there was not a great deal of difference. I would be inclined to think that the cut was probably a little below the level of the wash, probably as much as 2 feet.

Q. That is, the bottom of the cut?

A Yes, sir. Possibly as much as 2 feet below the bed of the natural stream

Q. This marking that you have made on the map is at this place between these two contour lines figures 1310 and 1320?

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A. Yes, sir.

Q. Did you notice any other cuts in this cienega?

A. No, sir.

MR. STEVENS. That is not in a cienega there, the cut that he has just referred to.

Q. How is the vegetation about that tranch?

A. The ordinary weeds and grass that are generally found ao along the banks of these washes.

MR. HASKELL. Q. I would like to ask you in regard to the measurement of water from well number 14 as marked on plaintiffs' exhibit 1 , near the head of the Edy tunnel. Did you measure water flowing from that well at any point or any place?

A. Only on and after March 29, 1904.

Q. What did you find the flow of that well to be? And how is it shown on this diagram that you have been testifying in regard to.

A. In the column marked "Weir number 4 a", on the 29th it was 207.8; on the 30th, 205.1; on the 31st, 209.8; on April 5th, 1904, 205.1

Q. That was the actual flow in number of inches of the water from well number 14, was it?

A. No, I couldn't state that. It was the total flow of the water in tunnel number 2 above that point.

Q. Above the point of what?

A. The location of weir number 4 and 4 a, which is near the north line of the 90 acre tract.

Q. And above weir number 4 and weir number 4 a, are there any other wells besides well number 14 sunk in that tunnel and connected with it.

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A. There are a number.

Q. Were they flowing into that tunnel at the time you measured this water?

A. I have no means of know except from hearsay.

Q. Then that is simply the volume of water that you found flowing at that point in that tunnel?

A. Yes, sir.

Q. And that water came from the San Antonio Water Company's property?

A. To the best of my knowledge and belief.

THE COURT. Q. Does that tabulation give all the results and measurements given by you during the ~~xxxxx~~ period covered by your examinations?

A. Yes, sir.

MR. BRITT. Q. There was one question put to you by Judge Gregg about these ditches in the cienegas or cienega nearest the east line of section 4 as marked on this exhibit. Judge Gregg referred to a main wash. In that connection, did those lateral trenches connect with any wash?

A. No, sir. The main channel which was entirely artificial.

Q. And that main channel was the continuous outlet of the Y tunnel?

A. Yes, sir.

Q. That channel had a depth at the mouth of the Y tunnel of some 10 or 15 feet or something like that?

A. Yes, sir.

Q. Was there any pipe in that main channel, cement pipe or otherwise?

A. I think there was, but it was so buried that I couldn't be sure. But at the mouth of the Y tunnel there is a

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pipe, I didn't make any note of its size, but there is a pipe in an ordinary concrete box, and I suppose that that pipe probably continues on down. It is buried, however.

Q. The ditches or remains of ditches did not connect with any natural wash anywhere? They connected with a sort of central conduit or excavation which was the continuxxxation of the outlet of the Y tunnel.?

A. Yes, sir.

Q. This excavation which Judge Gregg mentioned near the margin of the creek which you marked with pencil on exhibit 1, was that the ditch through which the water of the creek was conducted to the measuring box, or was it an independent ditch that didn't go anywheres?

A. No, sir. All the water that passed through weir 8 passed through that ditch.

Q. Was it taken in an open ditch or was there a flume or anything laid in it?

A. For a time the water was taken out at a considerable distance above, probably 150 feet above this ditch, and carried around in a little wooden flume and emptied into the main ditch below. That was later disused and the water was carried from the stream through a pipe probably 8 or 10 inches in diameter. Through an earthen dam and emptied into the head of the cut

Q. And then it was carried through the cut to what?

A. Through an open ditch down probably 100 feet below. In fact the ditch was simply a continuation of the cut, xxx down to a point about 100 feet below that deepest part of the cut and there it emptied into a concrete pipe.

Q. Was that the place where you had your weir number 8?

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A. No. The weir is at a point four or five hundred feet below there.

Q. In what?

A. Where that cement pipe empties into a large sand box.

Q. Then you measured the water which came from the creek and into that cut and through the pipe, at the sand box?

A. Yes, sir; at the sand box known a s the division box where it was divided into two parts.

MR. STEVENS. That pipe x is a 30 inch pipe?

A. Yes, sir.

MR. BRITT. Q. As far as you have observed on the ground, was that cut about which Judge Gregg interrogated you used for any other purpose than to divert the water from the creek and carry it to the sand box?

A. Well, yes; I would rather think it was more for the purpose of increasing the supply of water, as it offered a freer channel for the water to run than the old method. This change was made just at the time that I first went on to the ground. The reason the water was not running when I first went in ther through weir 8 was because of this work they were doing and my first observation of it was after that work had been started.

Q. Do you know whether the water that you measured at that time, which I observe ran along 11 or 12 inches,-- do you know whether the water which you were then measuring at weir number 8 included any development water in this short cut in addition to the natural flow of the creek?

A. It did.

Q. Do you know to what extent the natural flow of the creek

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was increased by this cut?

A. Nothing more than just from observation of the water that percolated through the banks of the cut. I couldn't say how much it was.

Q. Did you observe the amount--

A. Just a moment. I believe I have. I have a notation made on February 1st, partly my own observation and partly hearsay, and I will give it as it is here. "Mr. Fox ? has constructed a ditch which takes the water out of the natural channel about _____ feet", I was going to measure it, but I didn't, and I will say that it was probably 150 or 200 feet above the old point of diversion. "And delivers the water back into the cut through a flume 8 inches in width, in which the water flows about 3 feet per second and .095 deep, which equals 0.191 second feet, equals 9.5 inches. Mr. Fox thinks this water represents about the amount flowing into the pipes before he commenced developing lately".

Q. The natural flow of a cut was about 9 inches as the result of that observation?

A. Yes, sir. I will state that at the time I measured this, this flume appeared to be carrying all the natural flow of the water above this cut, and at that time the water was trickling quite freely into the cut.

Q. Then the difference between that statement there and the measurements which ran along 11 or 12 inches in the tabulation here would be the increase from the little cut made there?

A. Yes, sir.

--o--

Here the court takes a recess until tomorrow May 17, 10 A. M.

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DEFENDANT.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Company, et al.

Plaintiff

vs.

San Antonio Water Company

Defendant

Volume IV.

I N D E X

	Dir.	Cross.	ReDir.	ReCross.
Kilburn, D. R.	298	308	313	314
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I. BENJAMIN, Official Reporter

May 17, 1907. Fourth Day.

Mr. Britt: We served a subpoena on Mr. Leake for the production of some records of the San Antonio Water Co. Are the records themselves in court?

Mr. Joliffe: No; they are not here. Mr. Leeke was to bring them and he went home purposely for that.

Mr. Britt: And he is not here yet.

Mr. Joliffe: No, sir; he would be here about this time. The train may be a little late.

--o--

D. R. KILBURN.

D. R. KILBURN, a witness produced by plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

Mr. Waters: Q. Please state your name?

A. D. R. Kilburn.

Q. Your age?

A. 69 years old.

Q. Your place of residence?

A. Cucamonga.

Q. How long have you lived at Cucamonga?

A. I lived there nine years; since '98.

Q. What time in '98 did you come there?

A. I moved there in March.

Q. What property did you come into the possession of at that time, if any?

A. The summer previous, in '97, I bought 40 acres of land in the colony.

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Q. What name was that place known by at the time you bought it?

A. It was the original Silvester Moote place, and afterwards owned by Dr. Henderson, and then by a man named Wells, and I bought of Wells.

Q. And what part of that 40 acres, if any, was cultivated land at the time you went there?

A. It was all in cultivation.

Q. In what kind of cultivation?

A. In grapes and in citrus fruit. There was a few lemons and a few oranges.

Q. How many acres in vineyard?

A. There was about 35.

Q. And the balance in what?

A. In oranges and lemons; principally oranges

Q. The first year you were there did you irrigate that ground?

A. Yes, sir.

Q. What part of it?

A. We only irrigated-- I pulled all the grapevines out that first season, or pretty much all out, and set out ten acres of orange trees, and we irrigated that and what oranges and lemons there was originally on the place when I bought it-- About 15 acres.

The Court: Q. You mean 15 acres altogether?

A. Yes, sir; 15 acres altogether.

Mr. Waters: Q. The next year what did you irrigate?

A. The next year we irrigated the whole of it.

Q. That would be 1898 or '99?

A. 1899.

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Q. In 1900 what part of it did you irrigate?

A. We have irrigated the whole of it ever since.

Q. The first year you were there what water did you irrigate with? Out of what stream?

A. Out of the Cucamonga cienegas springs.

Q. And through what pipe line?

A. A cement pipe line running from the intake on the Cucamonga Creek at the springs or below the springs. That reached to Hellman Avenue.

Q. And from Hellman Avenue to your place through what pipe line?

A. We had then a cement pipe line. That was a division box on Hellman Avenue, and from there we took our quota of water. and carried it in cement pipes to our individual holdings in the colony.

Q. Was there more than your quantity of water running in that pipe line down as far as that division box when you first came to the country?

A. Yes, sir.

Q. How much water was running to that division box?

A. Well, the first years I was there I presume likely there was in the neighborhood of 60 to 70 inches coming down to that sand box.

Q. And of that 60 to 70 inches what part of it ran down the pipe line that you irrigated out of?

A. 33.84 inches.

Q. Under a four inch pressure?

A. Yes, sir; miners inches.

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Q. And the balance of the water went where?

A. The balance of the water -- the sandbox and division box were so arranged that the surplus was running over a weir into the Cucamonga Water Company's pipe line.

Q. How was this water-- the 33.84 inches-- handled by you and your associates?

A. It was handled in a head of that amount, and we took it in turns.

Q. In what proportions?

A. In proportion to our holdings.

Q. Do you know the purpose or purposes for which that 33.84 inches of water was used?

A. It was used for domestic purposes and irrigation.

Q. You have heard Mr. Kincaid give the areas of the respective places or farms of the old settlers, so called?

A. Yes, sir.

Q. And the amount of water of that 33.84 inches which belonged respectively to each one of those places named by him

A. Yes, sir.

Q. State, Mr. Kilburn, as to whether the schedule of distribution of that water to the land, and the interest of each, was correctly or not stated by Mr. Kincaid in his testimony.

A. It was correctly stated. I think that when he first went over it he omitted Mr. Stinchfield, but afterwards I think his interest was called in. The rest were all correct and I think that was afterwards put in.

Q. Now, as to the purpose for which that water was used since you have been familiar with it since you came there in '98 what have you to say?

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A. It has been used exclusively for domestic purposes and for irrigation.

Q. Upon those respective farms?

A. Upon those respective farms and none other.

Q. Was it necessary for the proper cultivation of those orchards to use the water?

A. Most emphatically it was, and there was none too much of it.

Q. How was it with respect to its being intermittent or continuous?

A. The first couple of years I was there it was continuous, and we got the full flow of water all the time, day and night, 365 days in the year.

Q. Was it used by you and your associates under any claim of right so to do or not.

A. Yes, sir.

Q. Under what claim?

A. The water was deeded to us we held it under a deed.

MR. CHAPMAN. We object to that testimony on the ground that the deed is the best evidence.

THE COURT. The objection is well taken. You claim to own it I suppose ?

A. Yes, sir.

MR. WATERS. Q. Did a shortage occur ?

A. Yes, sir.

Q. When.

A. We didn't have any shortage of our water-- it was delivered to the Old Settlers , until 1902. There was a shortage in the springs but we got our quota of water all

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right.

Q. In what time of the year 1902 did the shortage occur?

A. Well, it occurred all through the season. It started in short and kept growing less.

Q. How short did it start in?

A. We had a measurement of that water about the last of July or first of August and we saw that it was getting very low or short, and we had then 25 inches and a little fraction over.

Q. What did you next observe as to shortage?

A. It kept growing less all the time through the irrigating season of 1902.

Q. How short did it get?

A. We had a measurement again the last part of October and there was less than 20 inches; I think about 18 inches that we got.

Q. Do you know during that season or the season immediately preceding that-- the one of 1901-- of anything happening which might have caused that shortage?

A. Yes, sir. We contended--

Q. I am not asking what you contended. I ask you if you know if anything happened that might have caused that shortage?

A. There was many wells sunk above and to the west of these springs, and without question that caused the shortage.

MR. CHAPMAN. We object to that--

MR. WATERS. That may go out.

Q. Now, what wells were made up to the north and west?

A. I am not familiar with the names of those different

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wells up there. There was quite a number of them. I know among them is the Rubio well and the Haskell well and the Lone Star well andseveral others to the west of those. I know some of them by the number. There is number 14, and so on.

Q. Was there a tunnel any where to the west side?

A. I heard that there was. I never was at the tunnel

Q. In 1903 how was the flow of water in the Cucamonga Springs stream which fed your pipe line?

A. It became very near exhausted; very near dry. I think there was times in the latter part of the season when there wasn't over 4 or 5 inches of water in it.

Q. How was it during the whole season of 1903?

A. It was short.

Q. How short?

A. I don't think there was any part of the season that we got over 16 inches of water.

Q. What if you know happened during that year, 1903, which might have affected and caused such short ge?

A. Nothing further than the continuous pumping of the wells above.

Q. The wells that you have mentioned?

A. The wells that I have mentioned, with others.

Q. In 1904 what was the condition as to the shortage in your supply?

A. It continued very short. There was but very little water that came from the springs.

Q. What was happening during that year that might have caused the shortage.

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A. The continuous pumping of the pumps above and to the west.

Q. Did this shortage work any injury to you and the other users of this Old Settlers right of 33.84 inches?

A Yes, sir; it did; it interfered with us very materially.

Q What injury did that shortage cause to you and your associates?

A. We had to hunt water at other places to keep our orchards a live.

Q. Was it expensive?

A. yes, sir.

Q. About how expensive?

A. Well, it cost us about between eleven and twelve thousand dollars in the getting of other water.

Q. Did you get it promptly or were you delayed to such an extent that your orchards suffered any?

A. Yes; it was delayed until our orchards did suffer.

Q. In what way did your orchards suffer?

A. They went dry.

Q. Was the growth retarded or set back?

A. Yes, sir; some of them nearly dried up.

Q. Did the trees take on less or more growth?

A. Very much less.

Q. Did your vines take on less or more growth?

A. Well, I had nothing to do with vines. From observation I would say that they did take on less growth.

Q. How about the fruit crops of your associates and yourself at that time? Was it decreased or increased by virtue of this shortage of water?

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A. It was decreased.

THE COURT. Q. Did you supplement your water supply by water from other sources?

A. Yes, sir.

Q. Where did you get the water?

A. We bought some water land up there and sunk a well.

Q. Sunk one well?

A. Yes, sir.

Q. Where abouts was that?

A. The well was 82 rods west of the Archibald avenue and a little less than half a mile north of the postoffice or the store at Cucamonga.

Q. Has that well any known designation?

A. Well, it is the Old Settlers well.

Q. When was that put down?

A. That was put down in 1903 and 4.

MR. WATERS. Q. I would like to ask one further question, brought out by His Honor's questions. This water of this well which your Company has acquired, is it gravity water or do you have to lift it?

A. We have to lift it.

Q. Does that cost anything?

A. I think it does.

Q What does it cost to lift it?

A. I have 40 acres, and my 40 acres of land-- to irrigate 40 acres I am supposed to have 5 inches continuous flow and it costs me from the pumping of that well about $300 a year.

Q. To say nothing of the original investment?

A. Yes, sir.

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Q. And your part of the investment was how much?
A In the neighborhood of $2000.
Q. In theplant?
A. Yes, sir.
Q. And .300 a year?
A. Yes, sir.
Q. Your 5 inches of gravity water out of the springs stream, what annual expense was that to you?
A. It costs $5 a year; it cost me $5 a year.
Q. For the 5 inches?
A. Yes, sir; and that was simply paid to hire the zanjero to turn the water.
Q. Was the cost to your associates per inch of the 33.84 inches the same as yours?
A. Certainly it was.
Q. Then the cost of the plant-- the pumping plant and system-- can be figured by reckoning your proportion as 5 is to 33.84, so would be the amount that you expended to the total amount.
A. Yes, sir.
Q. And theirs would be the same as to the expense of the springs stream?
A. yes, sir. It was proportionate to their holdings.
Q. State whether this expense and each of the items that you have referred to was proportionate as between all of them?
A. It was.
THE COURT. Does that mean as between the Old Settlers or all of the consumers?

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MR. WATERS. I mean the Old Settlers, or those cl iming the 33.84 inches.

A. Yes, sir; the expense was divided in proportion to our holdings.

Q. Of benefit and of burden?

A. Yes, sir.

CROSS EXAMINATION.

MR. CHAPMAN: Q. How much of the eleven or twelve thousand dollar expenditure that you made there went to the purchase of land where you obtained this water?

A. $8000 paid for the land-- the land and the pumping plant that was on it at that time.

Q. What was the balance paid out for?

A. The other was paid out in deepening the well and putting in the pumping plant-- an engine and pump.

Q. That made up the expenditure of the eleven or twelve thousand dollars?

A. Yes, sir.

Q. And you have the land yet?

A. Yes, sir; we have got the land.

Q. And the pumping plant?

A. And the pumping plant.

Q. How much did it cost you last year -- 1905-- for pumping?

A. I couldn't tell you now.

Q. How for 1904?

A. In 1904 it wasn't very expensive. Our pump was new and the engine new, and after we got it installed it was not very expensive. It cost us in the neighborhood of $6 a day.

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Q. Altogether?
A. Altogether.
Q. For how many days?
A. We pumped in the neighborhood of 200 days.
Q. And how was it in 1906?
A. Well it was probably a little more expensive in 1906.
Q. And up to this time this year how much has it cost you?
A. We haven't pumped any this year.
Q. What year was it that it cost you $300.
A. Last year -- 1906. The total expenses as given by our xx secretary,-- I am on the board f directors-- was something over $2900 .
Q. Altogether?
A. Yes, sir.
Q. Did that include the repairs on the pump?
A. Yes, sir.
Q. Did you construct any new pump or any new additions to the old pump?
A. No, sir; nothing more than repairs?
Q. How much wat r did you get by gravity last year?
A. I never measured it and I never saw it measured. There was a little stream coming out of our pipe.I suppose that might be a couple orr 3 inches, but I didn't measure it.
Q. How much was there the year before?
A. It was about the same. Not very much variation.
Q. You say the first 2 or 3 years that you went there you had the flow of 35.84 inches continuously 365 days in the year?
A. Yes, sir, if w wanted to use it. We sometimes turned

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it out in the winter time, when we were not using it, into the wash, and it ran down into what is called the Cucamonga Wash.

Q. You only meant that you had so many it of the 365 days in the year as you wanted?

A. Yes, sir.

Q. And that continued down to what time?

A. Well, it continued down to 1903.

Q. And in 1903 you constructed that well that you speak of?

A. Yes, sir.

Q. Do you remember the time that you completed that well?

A. I think we got the well and pump and everything completed ready to work, and I think we started it on the 11th day of June.

Q. What year?

A. In 1904.

M . WATERS. That was after this suit was started. The complaint was filed March 1st.

Q. Now have you kept track of the level of the water in this Old Settlers well since the time it was sunk -- what is it, a bored well?

A. Yes, sir. It was dug 76 feet in a shaft and then bored from the bottom. We have since filled up the shaft.

Q. And to what depth?

A. It was bored to the depth of 448 feet. That includes the shaft and all. It was 448 feet from the surface of the ground.

Q. How high did the water stand in the well when it was first completed?

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A. 24 feet from the surface of the ground.

Q. Have you kept track of the water level in that well from that time to this ?

A. Well , I have seen it measured, and I measured it several times. I had charge of the water there for 2 years and the pumping. And when I put the pump in there the pumping pipe that brought the water was 60 feet. We put it down 60 feet from the surface.

Q. How far was it from the surface itself to the surface of the water in the well?

A. The water stood 24 feet from the surface of the ground and we put the pipe down 60 feet. And we would pump the water, in pumping continuously, down to about 45 feet.

Q. Then when you would stop pumping would it raise again?

A. Yes, sir. Up to 24-- it has been getting a little less since that time. It is not that much when we are not pumping. I think now probably it stands something like 34 or 5 feet from the ground when we are not pumping.

Q. Hasn't there been more water there this spring than 2 or 3 or 4 years before?

A. I haven't been to the well at all. I haven't examined it at all this season. We haven't had no occasion to use it.

Q. Have you observed this year at all to what depth the water now is?

A. I have not.

Q. And how late in 1905 did you make a measurement of it if you made any at all.

A. Well, I don't remember; I measured the water very frequently all along during the summer during the pumping

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season.

Q. Did you measured it after the pump had stopped?

A. In the fall?

Q. At any time?

A. I don't know as we did. I don't know as I measured it it in the fall.

Q. What is the lowest that you have ever known that water to be when the pump was not running, by any measurements made by yourself?

A. Well, I think I measured it once when the pump hadn't been running for a little time-- a few weeks-- and the water was standing at about 46 feet from the surface.

Q. Do you remember what year that was?

A. That was a year ago last summer. That was in 1905.

Q. Do you remember about what time in the summer?

A. It was late in the fall; I think in October or November. October. I think in the latter part of October.

Q. When you measured it next how was it?

A. I think that was the last measurement I ever put on it.

Q. How much gravity water are you getting now?

A. I haven't measured it. I have seen it flowing. There is quite a goodly stream of water there now.

Q. What would be your estimate of it?

A. You mean that runs from the springs?

Q. I mean from your system as it was before you put this well down?

A. Well, the water that comes down to Hellman avenue I suppose would amount to somewhere between 20 and 25 inches.

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RE DIRECT EXAMINATION.

MR. WATERS. Q. How much landdid you and your associates buy up there wh re you put down this well?

A. We bought 20 acres.

Q. What kind of land is it?

A. Part of it is good tillable land.

Q. Has it any orchard or is it vacant or what?

A. It is now in orchard, nearly all of it.

Q. Has that land other source of water supply than from that well?

A. No, sir; only what few drops we get out of that spring, it comes together, what little we get from the spring. It united at our sandbox with what we pump.

Q. Can that water from the spring be got to that 20 acres?

A. No, sir.

Q. I am asking you if that 20 acres has any other water supply from any other well?

A. No, sir; not any other water supply.

Q. How long and how expensive a pipe line did your company have to construct in order to get this water down to your old system?

A. 2150 feet.

Q. Did that cost anything?

A. Yes, sir.

Q. How much?

A. Well, it cost from 12 to 16 cents a foot for the pipe, and the digging of the ditch and l ying the pipe and the expense of sand--

Q. How much did it cost if you know?

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A. It probably cost six or seven hundred dollars.

RE CROSS EXAMINATION.

MR. CHAPMAN. Q . Is that six or seven hundred dollars included in the eleven or twelve thousand dollars?

A. It was included in the lump sum of eleven or twelve thousand dollars.

Q. You say this 20 acres you purchased is now set out in orchard; is the whole of it set out?

A. Yes, sir it is all set out except about an acre where the pumping plant is.

Q. Who set it out--

A. And about an acre or such a matter on the west side.

Q. Who set it out?

A. My son set part of it.

Q. After the purchase?

A. Yes, after the purchase; and there was some of it set out when we purchased it.

Q. How much was set out before you purchased it?

A. There was 10 acres that was planted, but there was probably pretty near a fourth of that where the trees were out.

Q How many acres did you say were planted?

A. It filled up the old orchard that was on it. That is, the orchard that was already on it when we set it out, which probably took 200 trees. And then they set 5 acres in lemons on the other 10, and the balance in apricots and peaches.

Q. What I meant to ask you was how many acres did you say was set out at the time you purchased it; that is before you

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purchased it.

A. As I said, there had been 10 acres planted, but there was about one fourth of that 10 acres that the trees were missing.

Q. Do you irrigate that 20 acres orchard that you have there now from this well?

A. Yes, sir.

Q. That is done by the Old Settlers is it?

A. Yes, sir.

Q. About how much water do you use on that orchard?

A. They calculated to use about 2 1/2 inches.

THE COURT. Q. Does the Old Settlers Company still own that 20 acres?

A. There is a contract made for sale on it but there has been very little paid on it. There has never been any deed made.

MR. CHAPMAN. Q. Who has possession of it?

A. The man that has a contract on it has the possession of the farming land?

Q. And you furnish him with water?

A. Yes, sir.

Q. Did you sell him an interest in the water with the land?

A. That land was to have 2 1/2 inches of water.

THE COURT. Q. And in selling it, the Company reserved the water right?

A. Well, the right; yes, sir.

MR. CHAPMAN. Q. What was the contract price of this land?

A. It was $5000.

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W. T. LEEKE.

W. T. LEEKE, a witness produced by plaintiffs, being first duly sworn, testified as follows.

DIRECT EXAMINATION.

BY MR. BRITT. Q. Have you brought the records that are named in the subpoena served on you yesterday?

MR. CHAPMAN. Will you permit me? I understood His Honor to ask Mr. Kilburn the question that when they made this sale they reserved the water rights, and he said he did.

THE COURT. Yes, sir.

MR. CHAPMAN. I intended to ask that question and I thought perhaps your honor asked it, and I wanted to be sure before he left.

A. Yes, sir.

Q. Produce them, if you please.

A. There are some other matters connected with the papers besides the records you asked for.

Q. You are an officer, namely, the president of the San Antonio Water Company, the defendant in this action?

A. Yes, sir.

Q. How long have you been president of the Company?

A. Since the fall of 1896.

Q. That was soon after the organization of the Company?

A. No, the company was organized at a much earlier date.

Q. Can you tell by the reference to these records that you have mentioned, the dates when the several wells that hae have been heretofore referred to in the testimony, were either dug or bored or deepened by your Company?

A. Yes, sir. I have a memorandum to that effect. The data

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are so scattered that I simply made a memorandum.

Q. To begin at the western most of the chain of wells north of Base Line or Sixteenth street, what was the first excavation of well number 1?

A. The only record I was able to obtain on those wells was the date of payment, obtained from the vouchers, the date of payment with the number of feet of excavation.

Q. Do you happen to know how that payment corresponded in point of time with the work that was done?

A. I presume the payment was made shortly after the completion of the work.

Q. Proceed.

A. Well number 1, Sixteenth street, was completed in August-- assuming that the date of payment was in August, I assume that it was completed at that time--

MR. CHAPMAN. Q. What year?

A. 1901.

MR. BRITT. Q. To what depth?

A. 705 feet. I obtain that data from the payment for the number of feet excavated or bored.

Q. Well number 2?

A. November 1900.

Q. To what depth?

A. 624 feet.

Q. Number 3?

A. In May 1900.

Q. To what depth?

A. 540 feet.

Q. Number 4?

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A. December, 1901.

Q. To what depth?

A. 707 feet.

Q. Number 5?

A. April 1902.

Q. To what depth?

A. 643 feet.

Q. Number 6 is the Rubio well, is it?

A. Number 6 is the Rubio well.

Q. Your company bought that as a partially completed well, or, at least, a well sunk to a considerable depth at the time you acquired it?

A. Yes, sir.

Q. What was the depth of the well when you purchased it from Rubio?

A. I have no means of knowing. I know what we assumed it to be. I don't know that it was ever measured.

Q. What did you assume it to be?

A. Between three and four hundred feet.

Q. Did you sink lower?

A. No. The shaft has been lowered in order to place the pumping machinery lower in the well, but the well itself has not been lowered. At least, that is my belief in the matter.

Q. You mean the bottom of the well has not been sunk any lower?

A. Yes, sir.

Q What time did you acquire the possession and control of that well?

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A. In the summer of 1902.

Q. Did you receive it from Rubio direct or from some intermediate owner between you and him?

A. From an intermediate owner.

Q. Who was it?

A. Myself.

Q. You owned it personally?

A. I held the title deeds.

Q. What time did you obtain the title?

A. I think it was in the summer of 1902 if I recollect right.

Q. You conveyed pretty soon after to the Company?

A. I conveyed to the Company all the water rights of that tract and retained for a time in my own name the land.

Q. Did you at any time afterwards transfer to the Company the land in which the well is situated, or do you still retain that personally?

A. No, I transferred to the Company the wash land and the uncultivated land, excepting retaining about 41 acres , including the cultivated land and the well.

Q. And that well number 6 or the Rubio well is situated in a wash?

A. Pardon me. I didn't quite finish what I ought to have said. Early last spring I transferred the cultivated land including the well, to Atwood and Walline.

Q. Including the well?

A. Yes, sir, including the well.

Q. That is the spring of 1906?

A. Yes, sir.

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Q. You had previously transferred the well to the San Antonio Water Company, I understood you to say?

A. No, I hadn't parted with title to the well. The San Antonio Water Company-- I had transferred all rights to the water excepting 8 inches of water to be used on the cultivated lands, and that 8 inches was supposed to be obtained from this well. Therefore the well practically remained as a part of the real estate connected with the cultivated land.

Q. At the present time what is the extent of the interest of the San Antonio Water Company in that well number 6.

A. It owns the entire right excepting the 8 inches. The land upon which the well is situated is deeded directly to Atwood and Walline. We presume that they own the well and they have a right to draw from that well to the extent of 8 inches of water continuously during the irrigating season.

Q. And the San Antonio Water Company has or claims to have the balance?

A. I don't understand that the San Antonio Water Company has any right to operate that well at all. Whatever water there underneath the ground, they have a right to develop, if they choose to do so.

THE COURT. Q. Do you mean to say that your Company derives no water at all from the Rubio well?

A. No, sir; except such as is used on the land, and, if I remember correctly they have never pumped the Rubio well except to irrigate the Rubio ranch. It was never operated as part of our general supply system.

MR. BRITT. Q. The Company has the deeds or papers I presume,

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which evidenced those transfers that you mentioned-- the deeds made to you and by you to the company?

A. I presume we have the deeds on record.

Q. If you have those deeds I will be glad to have you produce them later. Wells number 7 and 8 are known as the Haskell wells, aren't they?

A. Yes, sir.

Q. When was well number 8 sunk?

A. I will have to refer to my memorandum. I don't remember all the dates. Well number 8 September 1900.

Q. To what depth?

A 514 feet.

Q. Well, number 7 was originally a dug well, wasn't it, when the San Antonio Water Company acquired it?

A. Yes, sir.

Q. That was lowered or drilled to a greater depth?

A. Yes, sir.

Q When was that drilling completed?

A. I think in December 1899; near December, at least.

Q. To what depth?

A. 649 feet.

Q. Now, Mr. Locke, I will inquire of you in the same way to state when those several wells were first pumped by the S San Antonio Water Company?

A. The Haskell well -- number 7-- the first well of the Haskell well-- I have no data on that subject, but it was pumped to some extent before we bored the well to this depth. And the spring after boring the well to this depth we put a centrifugal pump in and pumped it.

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Q. Do you remember what time that contrifugal pump was placed in the well?

A. It was evidently the spring of 1900, that is the large pump for lifting a large quantity of water. But I have no data from which I could tell the actual time. It would depend to some extent on the rainfall or the necessity for water.

Q. Mr. Trask stated that he made a measurement of water pumped from that well in February 1900, and I presume that was pretty soon after the pump was installed?

A. I presume that those early winter pumpings were for the purpose of testing. I know that shortly after the well was completed and we installed the machinery, we did pump it to ascertain the value of the well, whether it was continuous or not.

Q. That was well number 7?

A. Yes, sir.

Q. About well number 8: when was it first pumped b the San Antonio Water Company?

A. From my memorandum I find that it was completed in September 1900. I am not sure whether we installed machinery at once and pumped that fall or not. If not, we undoubtedly began pumping next spring, but I am not sure about that.

Q. And well number 6, the Rubio well, did the San Antonio Water Company pump that at any time?

A. I don't recollect, of the San Antonio Water Company ever pumping the water into the general system of the Company. They did pump that well to supply water to the 40 acres of orange grove on the place.

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Q. Was there a grove of 40 acres of oranges on the place at the time the Company took the title from you?

A. Practically so. It was something over 40 acres. I think about 3 acres were in lemons and the remainder in oranges. The lemons have been in the last several years changed to oranges.

Q. Proceed westward to well number 5. When was that well first pumped by the company?

A. It was completed in the spring,-- April I presume-- of 1902. I can't tell when it was pumped. That appears to have been the last well sunk and we only pumped to supply our needs. If we needed a well we would pump it and not otherwise, and I am not at all sure .

Q. Number 4. Can you give the date of the first pumping?

A. I cannot give the dates of the first pumping?

Q. How about 3, 2, and 1?

A. Number 3, the pumping was begun in that well in '95 or '6; '96 I think.

Q. From it as a shaft or dug well?

A. I couldn't state as to that. I paid but little attention to it in '96.

Q. You stated a while ago that that well was completed to a depth of something like 700 feet?

A. May, 1900, it was deepened to a depth of 640 feet. That well was pumped, by reference to my records, in '96 and in '98, and it was deepened by boring in 1900.

Q. How much was it deepened? What was its depth before it was deepened by boring.

A. I am not familiar with the status of that well. Our

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Company originally did not dig that well, and I paid very little attention to the condition of it when it passed into the possession of the company. I remember that it furnished about 30 inches of water before this deepening in May.

Q. And you can't say how much it was deepened? Do you know how much a foot you paid for the boring of it when it was deepened?

A. I can say this; we paid for 640 feet of deepening, but this deepening-- the payment was always counted from the surface of the ground; it didn't matter about the shaft of the old well at all. When the borer is put down the contractor usually charges from the surface of the ground and this 640 feet is computed from the surface.

Q. After it was deepened can you tell when it was first pumped?

A. I can't tell that.

Q. How about number 2?

A. I can't tell when that was pumped. We simply pumped-- not all of them at once, but as we needed the water,-- and it is utterly impossible to have it in my mind.

Q. And number 1 , the same? You make the same answer?

A. Number 1 was pumped at a much later date. It was the last well fitted up.

Q. When was that finished?

A. It was bored in August, 1901, but it was not provided with machinery until a year or two later.

Q. Were all of those wells fitted up with substantially the same sort of machinery, centrifugal pumps?

A. They are at the present time.

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Q. And operated by what power?

A. Electricity.

Q. I presume that you have a record showing the times when those wells were pumped after the machinery was installed and they were put in commission or operation, and the quantity that was pumped?

A. No, we haven't records to that extent. Our office burned a little more than a year ago and it burned a good many of our records connected with the wells.

Q. What records have you relating to the output of water from those wells?

A. Simply reports of measurements from our engineers, and only a few of those. Many of them have been destroyed. I presume they are destroyed. I haven't been able to find them since the fire.

Q. Allow me to see one of those reports, if you please.

A. There is other matter pertaining to the company outside of this suit.

Q. Yes, but I don't care anything about that. Before proceeding to those reports, I see they make reference to other wells. I want to inquire about well number 14?

A. In our books we have no well 14.

Q. It is the well at the head of the Edy tunnel?

MR. STEVENS. Mr. Wright says it is number 9.

MR. BRITT. Oh, yes; that is right.

A. I would like to locate it on the map.

Q. It is called on this map, well number 14, referring to plaintiffs' exhibit 1. That is a large well, isn't it?

A. Yes, sir; it is a large well.

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Q. What is its diameter?

A. I am not positive. I think it is 15 inches and then reduced to 12 and possibly to 10 inches. In boring these wells we often begin with a large diameter so that in case we have difficulty with boulders or different material that we pass through the pipe can be reduced and it usually is.

Q. What is its depth?

A. I don't know.

MR. CHAPMAN. I don't know what the purpose of this is. It might be material for some purpose, but I want it understood that we object to it if it is for the purpose of showing any injury done to plaintiff by that well, on the ground that it is irrelevant and immaterial.

MR. BRITT. That is a matter that I will have something to say about later. But at present I want to learn the facts about the well.

Q. You don't know the depth of it?

A. No, sir.

Q. When was it finished?

A. I don't know that. Our Company didn't put it down.

Q. Who did?

A. I am not positive under whose auspices it was put down. I am inclined to think Mr. Stowell supervised the work, but whether the Fruit Land Company or Mr. Stowell or parties connected with that interest-- I don't know which of them handled it.

Q. When did your Company obtain possession and control of the well?

A. It doesn't belong to our company.

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Q. Does your company use it?

A. Our company doesn't use it. Not as I understand it. It is not on our company's lands, we have no title to it.

Q. Does it discharge any water into the Edy tunnel which your company receives?

A. It discharges water into the Edy tunnel, and I presume undoubtedly, our company receives a part of it.

Q. In that sense then your company uses the well in that it receives the water from the well?

A. Our Company receives from that tract of land 130 inches of water under the contract and deed of sale from the Cucamonga Fruit Land Company irrespective of wells. No wells are designated in the sale and this well was not actually in existence when that contract was made.

Q. When was this tunnel connected with that well?

A. I think some time in 1903; 1902 or '3; some where along there. It was not connected by our company.

Q. How much of the water of the well is received by your company?

A. It is impossible for me to answer that, because I don't know, and I don't know as there is any means of ascertaining.

Q. Let me see that report which you showed me a minute ago. Are all these other papers in the form also of reports made by Mr. Trask the engineer?

A. Mr. Trask, and also by engineer Sanders. Mr. Trask only has a very few reports. Mr. Sanders and Mr. Hobbey. I am very sorry we haven't a full list of this.

Q. This fire that destroyed your books occurred about what

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time?

A. I think it occurred a year ago last February or about that time.

Q. You had records which were consumed in that fire and in which had been transcribed the record of the history of these several wells and the output of the several wells?

A. I wasn't secretary of the company and paid very little attention to the records as records; but we should have had a full list of reports, and I am confident that the missing reports were burned in that fire. I don't think we lost many books in the fire. I think they were principally reports.

Q. Do you now have no book in the company's office or under its control anywhere, which shows the quantity of water produced by each of those wells?

A. No, sir. I am confident there is no such book.

Q. Or of any of them?

A. No, sir; I think not. At least, I don't know.

Q. Was there any book of that nature kept by the secretary or other person connected with the company and by the company's direction?

A. A book of that nature was purchased and put in the hands of our superintendent for that year, and I examined that book this morning and there is not an entry in it. I didn't know till I looked over the matter to what extent entries were made, but it was utterly blank.

Q. Who was the superintendent?

A. Mr. Hobbey.

Q. What was your system? Did you have a daily report from

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Q. Who was the superintendent?

A. Mr. Hobbey.

Q. What was your system? Did you have a daily report from

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the men operating the pumps as to the product of each well?

A. We had a system of reports of that kind, if I remember rightly; but there isn't one of them left; they are all burnt.

Q. Have they been kept since the fire in the same way?

A. We haven't pumped the wells at all since the fire. We may have pumped one for irrigating the Rubio ranch, but no record has been kept of that; and we pumped for perhaps half an hour or 10 or 15 minutes for the purpose of filling a tank connected with our electric system, but no continuous pumping.

Q. You say some of these reports were made by Mr. Hobbey?

A. Yes, sir.

Q. How is that name spelled?

A. H-o-b-b-e-y.

Q. Allow me to examine the reports by Mr. Hobbey. Referring to this report, state its date and see if it requires some explanation to make it intelligible to outsiders.

A. The 9th of July, 1901.

Q. That is a written report made by Mr. Hobbey who was the superintendent of your company?

A. Yes, sir.

Q. At the date mentioned?

A. Yes, sir.

Q. I notice that it purports to show water measurements in miners' inches. I will ask you about the first item mentioned there-- the Frankish & Stamm tunnel. Where is that tunnel situated? I don't want to know anything that don't concern us here.

A. That is situated in the debris cone at the foot of the

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mountains.

Q. Is it anywhere in the neighborhood of Cucamonga Springs?

A. Oh, no.

Q. Bodenhamer tunnel. Where is that? A. To the west of San Antonio colony.

Q. Several miles away from the Cucamonga Springs?

A. Yes, sir.

Q. Then here is the Spring Hill: Where is that?

A. In San Antonio Canyon.

A. And the next is the division dam. Where is that division dam?

A. In San Antonio Canyon.

Q. That hasn't anything to do with the water that we are contending about?

A. No, sir.

Q. The Gird Water: Where is that?

A. San Antonio Canyon.

Q. San Antonio Tunnel: Is that in the San Antonio Canyon also?

A. Yes, sir.

Q. The next item is the Sixteenth Street well or pump number one. What well does that refer to? Is that well number 1 which you have been asked about here a little while ago?

A. No, sir; the old number 1 is now designated as number 3.

Q. And it shows at that time an output of how many inches?

A. 70 inches.

Q. The next is the Stowell Tunnel well, 124 inches. Where is that Stowell Tunnel well? Is that the Edy tunnel?

A. Yes, sir.

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Q The same thing as the Eady tunnel?

A. Yes, sir.

Q And the output on that date from that tunnel was 124 inches?

A. Yes, sir.

Q. And the next thing is the Stowell measuring box, 107 inches: where is that Stowell measuring box?

A. It is on the pipe line extending from the mouth of the Eady tunnel west to Ontario. T at water is practically the same water. It shows there a deficiency for some reason. T ere is a discrepancy between those two which I do not understand.

A. Here is the total being deliver d to the San Antonio Water Company, 538 inches.

A. That means our entire supply on t at date, the 9th of July, 1901. The entire supply of the San Antonio Water Company was 538 inches from all sources.

Q. I observe that that Spring Hill weir shows a flow of 656 inches , which is greater than the amount which you say was the total supply of the San Antonio Water Company.

A. Yes, sir.

Q. How does that happen?

A. The measurements were made at the Spring Hill weir some three miles north of the division dam on a stream that was continually losing water, and w en it arrived at the division dam we had as our part of that water (only a portion of the water belonged to us) 256 inches. The 312 inches of the water that remained after this long reach o flow was turned over to Pomona, and that left us 256 inches of water actual flow.

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The canyon water is owned partly by ourselves and partly by Pomona.

Q. Your part of it was 256 inches?

A. Yes, sir.

Q. Where did that 73 inches come from that is noted here?

A. San Antonio tunnel. We have a tunnel below the division dam under the bed of the San Antonio creek, catching whatever seepage water may percolate to it, and that furnished us at that time 73 inches.

Q. Are there any other figures on the sheet relative to the output of water of any of these wells about which testimony has been given here?

A. This note may interest you. Average Stowell water for the month of June, was 122 miners inches. That is the month preceding this measurement

Q. Is there any average delivery of the output of the Sixteenth street wells or other wells north of Sixteenth street?

A. No, sir-- one moment. No.

Q. Did Mr. Hobbey the superintendent have within his jurisdiction or management the seven or eight wells north of Sixteenth street?

A. Yes, sir; he was the engineer in charge generally; the superintendent.

Q. Allow me to look over that a little further, if you please?

The Court: Q. Is he still at work for you?

A. No, sir; he left us at the end of a year. He was in very poor health and he has since died. He was quite an old man.

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MR. Britt: Q. I notice a statement there that on the 8th of June last the total being delivered to the San Antonio Water Company was 816 inches. Just read that first paragraph at the top of the page.

A. "The increase of 70 miners' inches pumped at Sixteenth Street"-- this is number 1; but now it is number 3.

Q. Read it as it is here.

A. No. 1 makes the net increase 278 miners' inches since the 8th of June last, at which time the total being delivered to the San Antonio Water Company was 816 miners' inches."

Q. That seems to be about the extent of the information contained in that report. That, I think, is dated July 5, 1901.

A. July 9, 1901.

Q. So that the decline which he mentions there had occurred within the period of about a month?

A. Yes, sir; simply the running off of the winter water and coming down to the summer flow.

Q. Have you some other reports by Mr. Hobey?

A. I have a report here dated the 20th of May, 1901.

Q. What figures now does it give? What statement is made? State it to the reporter, concerning the output and receipt of water by the San Antonio Water Company from the various sources of supply.

A. Bodenhamer tunnel, 5 miners' inches.

The Court: Q. I thought you stated that that was west of Ontario.

A. It is; it is disconnected with this case.

Stowell measuring box, 124.8 miners' inches.

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Mr. Britt: Q. That, I think you have explained, is at the mouth of the Eady tunnel.

A. Not at the mouth. The Stowell measuring box is not at the mouth of the Eady tunnel, but a half a mile or so west, on the same line.

Spring Hill weir, 919.5 miners' inches;
Division Dam, 644.5 miners inches;
Gird Water, 45.3 miners inches.
San Antonio tunnel, 115.8;
Frankish & Stamm tunnel, 16.
Stowell measuring box, -- another measurement later in the day-- 122.2 inches.
Weir in Stowell tunnel, 119.2 inches.
A part of this, you understand, is a repetition.
Total from San Antonio Canyon, 805.6;
Stowell water, 124.8;
Bodenhamer, 5. inches.
Total water, 935.4 inches.

Q. That does not seem to refer to any of these wells above Sixteenth Street at all.

A. None of them were being pumped at this time, otherwise it would have referred to them.

Q. Let us see any of these other reports which have a reference to those wells.

A. September 10, 1901.

Q. Read the figures.

A. Frankish & Stamm tunnel, 16 inches.
Division Dam, 176 inches.
Gird Water, 20. inches.

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San Antonio tunnel, 60 inches;
Stowell measuring box, 112 inches.
Frankish & Stamm tunnel 2 inches.
Total gravity flow, 375 inches.
Haskell no. 1 pump, 68 inches;
Haskell no. 2 pump, 66 inches;
Sixteenth Street no. 1, 66 inches;
Sixteenth Street No. 2, 65 inches.
Total, 265 inches, making a total over all, 640 inches.
Mr. Waters: Q. What is the date of that report?
A. September 10, 1901
Mr. Britt: Q. Now those figures concerning the output of the wells that we have been talking about here--
The Court: Q. You refe red to Haskell wells no. 1 and 2 and the Sixteenth Street wells by certain numbers. How do they correspond to the numbers designated here, starting from west and going east?
A. Haskell well no. 1 would be number 7; and no. 2, 8; and No. 1 Sixteenth street would be no. 3.
Mr. Britt: Q. These were reported by Mr. Hobbey as measurements made by him for that date?
A. Yes, sir.
Q. Any others of the same character?
A. No other records during that year by Mr. Hobbey. There is a report from Mr. Saunders who took up the work in October of t at same year. Mr. Saunders says: Octob r 14, 1901-- There is something that puzzles me here. October 4, 1901, Frankish tunnel, 71. inches
Q. That is where you think he is mistaken?
A. Certainly; because that tunnel in those days only ran

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two or three inches. It is practically a dry tunnel, or very close to it. You can see that in the forepart of the season it only ran a few inches.

Q. So you think he meant some other tunnel?

A. I don't understand what he meant by it.

Q. To what tunnel do you think he really meant to refer?

A. I think he must have referred to the tunnel in the canyon.

Q. The San Antonio tunnel?

A. Yes, sir; I think so.

Q. All right. Go ahead.

A. Division dam, 333 inches;
Gird flume, 19 inches.
Spring Hill, 430. That measurement indicates both the Pomona and Ontario water, measured in toto at Spring Hill.
Frankish & Stamm tunnel, .5 inches.
16th Street well No. 2, 70.3 inches.
16th Street well No. 1, 72.6 inches.
Stowell tunnel, 116.1 inches.
Haskell well No. 1, 68 inches.
Haskell well No. 2, 68 inches.
Rodenhamer tunnel, 3.5 inches.
In the division box at 10th Street, 117.8 inches.
It is a little p culiar that in this case the same measurement at the mouth of the tunnel is 116.1 inches, and the same water at 10th street in this case measured 117.8 inches, a slight increase, although furt er away from the tunnel.
Signed, W. H. Saunders, Civil Engineer.

Q. Have you another report that year-- 1901?

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A. No. It is possible that I may have another one here.

Q. Mr. Saunders was in your employ at the time he made that report?

A. Yes, sir.

Q. He took up the work which was formerly done by Mr. Hobbey?

A. Yes. I have nothing further in 1901.

Q. How about 1902?

A. 1902 I have one report from Mr. Saunders.

Q. What date?

A. It is not dated.

Q. Tere is a date at the foot.

A. The secretary has made a note at the bottom "Received May 15, 1902." Initials B.C.S. But the engineer has no date at all on this.

Q. It is likely that that was made shrtly before the time it was received by the secretary? A. I cannot tell.

Q. Read what it says.

A. "To the Board of Directors of the San Antonio Water Co. I respectfully submit the following water measurements . April 5, San Antonio Canyon division dam, 590. inches Of that 590 312 inches goes to Pomona.

Frankish & Stamm--

Mr. Chapman: You are probably mistaken. One half goes to Pomona up to 624. inches.

A. You are right. Thank you for the correction. 312, if it falls below 624.

Q. Go ahead with the other measurements.

A. San Antonio tunnel-- He confuses this with the Frankish

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occasionally-- San Antonio tunnel, 82 inches.

Sixteenth Street tunnel,-- I presume that is the Stowell or Eady tunnel, -- 124 inches.

10th street box, the same water a quarter of a mile distant from the pipe, 115. inches.

May 8, division dam, 515., of which one half goes to Pomona. San Antonio tunnel, 78 inches.

Sixteenth Street well no. 1, 70 inches.

Sixteenth Street well no. 2, 70.5 inches. Signed, W. H. Saunders, Civil Engineer.

Q. Any more that year?

A. Nothing further that year.

Q. There seem to be quite a number of measurements in the paper to your left. What is that?

A. This is Mr. Trask's measurement prior to Mr. Hobbey or Mr. Saunders' measurement.

Q. Made in 1900?

A. Yes, sir.

Q. If he has put that in his table here, we don't care about that. Look at this paper, Mr. Trask, and state if these went into the tabulation furnished the reporter yesterday morning or the day before.

MR. TRASK: I have an idea that part of them, but I can't say whether all of them did.

Q. Read those measurements reported by Mr. Trask and give the dates.

The Court: Why not put the others in and let Mr. Trask check those over? They may be already in.

Mr. Britt. The first measurement given by Mr. Trask was in

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Mr. Waters: We want the pump man's reports of these different pumps. We are informed that they were kept at each pump station. The pump station daily and weekly report.

Mr. Chapman: For how long?

Mr. Waters: During the times that you have pumped there. From beginning to end. You might as well bring them at once if you have got them. This subpoena just calls for records.

Mr. Chapman: I suppose your request is specific enough. I don't know whether they have got them.

A. I am not sure that that is the case.

Mr. Waters. I am not sure that that is the case, but we are informed that they are kept.

Mr. Chapman. Look them over and, if you have got them, bring them.

Mr. Waters. And if you are not the person, inquire of the person who has them and let us get to them, because we are bound to get at it.

Mr. Chapman: What disposition have we shown notto give you anything?

Mr. Waters: No, no, no. I am just talking very plainly, that is all.

Mr. Britt: I think that they have shown a disposition to furnish everything that they have, and I assume that they will be willing to produce these things.

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Here the Court takes a recess in this case until Tuesday, May 21, 1907, at eleven o'clock in the forenoon.

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SUPERIOR COURT.

DEFENDANT.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Company, et al.,

Plaintiff

vs.

San Antonio Water Company,

Defendant

VOLUME V.

I N D E X .

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I. BENJAMIN, Official Reporter

May 21, 1907. Fifth Day.

W. T. LEAKE.

W. T. LEAKE, whose examination was not concluded at the adjournment of court on May 17, was recalled to the witness stand and his examination resumed:

Mr. Britt: Q. Mr. Leake, when was the present scheme of notation of that string of wells which you call the Sixteenth Street wells, adopted, so that they are numbered consecutively from 1, beginning at the west, toward the east?

A. I can't give you the exact date, but I think it was shortly after the completion of the entire system of wells there. It was adopted so that it might be a little easier for us to designate to people in working.

Q. By what number do you designate the large well which is now at the head of the Eady tunnel?

A. I haven't been in the habit of designating it by any number, but I think our engineers call it number 9. I am inclined to think so. I haven't looked into the matter particularly.

Q. At what time was the control of that well last mentioned received by your Company-- the San Antonio Water Company?

A. Our Company only owned the right the 130 inches from that tract. As far as I know, we have no means of ascertaining from which wells the entire quantity or the separate quantities making the aggregate flowed from.

Q. Do you not remember that somewhere from 1901 to 1903 (it might have been in any of the intervening times, so far as my present recollection goes) that your Company extended that tunnel in such a manner as to tap that well, and that you had

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some difficulty about it by reason of the great saturation of the earth there with water, and that you gradually approached the present level of the tunnel where it intersects that well, with 1 or 2 so-called false tunnels; that you wanted to drain out the water to prevent any damage or undue flushing of the tunnel from that well; and that you were at some considerable pains in the construction of the works there before you finally intercepted the well with the tunnel at the present level ? Have you no remembrance of those circumstances?

A. The San Antonio Water Company have done work of that character there.

Q. Are you an officer of the Ontario Power Company?

A. I am the manager of that company.

Q. Are you president also?

A. No, sir.

Q. Did that Company have anything to do with connecting the well just now mentioned, which you referred to as number 9, with theb Edy tunnel?

A. Yes, sir; they did work there.

Q. At what time?

A. They began work there in the summer of 1902.

Q. And at what time did that Company then make the connection between the tunnel and that well ?

A. Some time in the summer of 1902.

Q. What division of the water between the Ontario Power Company and the San Antonio Water Company is made at the present time, or was made at that time, of the water flowing from that well number 9?

A. Previous to the acquiring of that well by the Ontario

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Power Company, and previous to their working there, the San San Antonio Water Company received their 130 inches without reference to that well whatever. After the Ontario Power Company connected that well with the tunnel I have no means of ascertaining what proportion of the water from that well went to make up the 130 inches, or whether any of it did. There was 130 inches running without the well when we began work there. 130 inches of water were flowing when the well came into the possession of the Ontario Power Company.

THE COURT. Q. For the purpose of information, what is this Ontario Power Company? What relation has it with the San Antonio Water Company?

A. The Ontario Power Company is a company formed for the development and sale of electricity, and for the development also of water, and its charter is broad in that respect.; it goes into the line of such business as it may desire to.

Q. Is it in any sense a side corporation of the San Antonio Water Company, or is it an independent corporation?

A. It is an entirely independent corporation so far as its legal status is concerned; but the San Antonio Water Company own the majority of the stock-- the larger portion-- the principal part of the stock.

MR. BRITT. Q. This Ontario Power Company is officered by the same officers as the San Antonio Water Company?

A. No, sir. The secretary of the San Antonio Water Company also acts as secretary of the Ontario Power Company, but the Power Company has its own president and board of directors.

Q. You are president of the San Antonio Water Company?

A. Yes, sir.

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Q. And the general manager of the Ontario Power Co pany?

A. Yes, sir.

Q. Who are at the present time the directors of the two company respectively?

A. Of the San Antonio Water Company, Mr. Jolliffe, Mr. Graves, Mr. Frankish, Mr. Crowell and myself.

Q. Five?

A. Yes, sir; five.

Q. And who are the directors of the other company?

A. Of the Ontario Power Company, L. S. Dyer, president, and J. M. Hartley secretary and also director Robert Manly director, Judge Gregg director, and I think B. C. Sheppard director.

Q. They have a common secretary?

A. Not a common secretary; the secretary of the Water Company is allowed to act as the secretary of the Power Company. He is allowed to take the time to act for the Power Company. He is allowed to use a portion of his time as secretary of the Power Company.

THE COURT. Q. What Judge Britt means is, that the same individual acts as secretary of the corporations. Is that right?

A. Yes, sir; that is correct.

MR. BRITT. Q. They have the office of the two Companies at the same place?

A. The office is in the same building. One side of the main office is used by the Ontario Power Company and the other wing by the other company.

Q. Which of those companies carries on the business of

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pumping the wells when pumping is resorted to?

A. The San Antonio Water Company only pumps wells. We purchase the power,--the electric power-- from the Ontario Power Company to pump our wells.

Q. And the water which is taken from that Edy tunnel is it divided anywhere between the Ontario Power Company and the San Antonio Water Company?

A. A division is made by measurement. The water that runs over the weir-- of the water that runs over the weir 130 inches is apportioned to the San Antonio Water Company and th the remainder is the property of the Ontario Power Company?

Q. Where is that apportionment made?

A. The apportionment is made at the mouth of the Edy tunnel.

Q. Are there 2 pipes there to convey the water away from the mouth of the tunnel?

A. Yes, sir; the pipe belonging to the Ontario Power Company and also the one belonging to the San Antonio Water Company.

Q. And the water which is taken by the Ontario Power Company there is used wholly for power purposes?

A. No. It is rented to the San Antonio Water Company and turned into their system at Ontario-- in the Ontario Colony.

Q. Is that after it is first used to drive electric machinery or before?

A. No. The water from that tunnel is not used to generate electricity.

Q. Then the Ontario Power Company leases or rents its water to the San Antonio Water Company, and the San Antonio

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Water Company distributes it?

A. That is right.

Q. How long has that arrangement been in vogue or in force?

A. Since the summer of 1902.

Q. Now, at the time that tunnel was so constructed by the Ontario Power Company, so as to intercept the water from well number 9, did you observe that there was any diminution in the flow of any other source of supply that the San Antonio Water Company had then, or any diminution of flow in the tunnel itself, or could you tell anything about it?

A. Personally I don't know of any means of ascertaining. Simply the flow in bulk was measured.

Q. Before that connection was made between the tunnel and the well number 9, what was the quantity of water flowing from the tunnel?

A. I don't know. We received our 130 inches. The balance went to Cucamonga. I don't know how much they received. I have no data except as may be indicated by these papers of Mr. Trask.

Q. How much was the flow of water increased from the tunnel by the connection made with that well in 1902?

A. I can't give that from memory. I presume these papers some of them might throw some light on it.

Q. Don't you know approximately?

A. I know there is quite an increase, but I can't give the figures.

Q. Is it here in any of the reports that you have?

A. Not in these that I obtained from the office, no.

Q. Have you something, a report or record at the office,

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which would show the augmentation of the flow after the connection of the tunnel with that well?

A. It is possible that I might from our records get an idea of them.

Q. We will ask you to do that with as much accuracy as is possible. Previous to that connection made between the tunnel and the well in 1902, has that well been pumped to your knowledge.

A. Before it came into the possession of the Ontario Power Company I think Mr. Stowell or the Fruit Land Company, and I am not familiar with the conditions between the parties, had a large pump in the well and pumped the well to indicate that water was plentiful in the well.

Q. Pumped it for test purposes?

A. Yes, sir.

Q. Was the new well sunk about 1901, first, ?

A. I don't know the date of its being sunk. It was sunk before it came into the possession of either of the companies that I represent. I presume that it was about that time.

Q. Do you know when the Ontario Power Company began to pump that well? There is evidence which shows that in 1904, in the early part of the year-- January, February or March, it was being pumped. Do you know when that pumping began?

A. Did you say in 1904?

Q. I say there is evidence before the court already that that well was being pumped in the erly part of 1904, January, February or March. I am inquiring when the pumping of the well first began?

A. I can't give you the dates. I have been trying in my

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mind to differentiate the dates but it is i possible for me to do so without data. The Ontario Power Company pumped that well for the purpose of clearing the water from the shaft so that the connection might be readily made with the tunnel; but the date or the month I can't give you.

Q. You stated the connection was made some time in 1902; about how long previous to that connection was that preliminary pumping begun.

A. I f I remember rightly there were 2 or 3 connections made. I gave you the dates so far as I know of the first connection. There was 2 or 3 connections made before the final connection. The final connection was only obtained by pumping the water from the shaft, and that was done at a much later date than the first or the second; and how long a time elapsed between the first and second I don't remember.

Q What was the reason for those several connections?

A. The wet character of the ground, the water apparently having come up from a large distance had saturated the plane -- the upper level-- and produced that condition that it was practically impossible to connect the tunnel at the lower level. Of course we had to connect it at a higher level and, I think, a second connection at a stil lower level and the third connection at the level of the tunnel.

Q. Do you remember what the level of the tunnel is at that point below the surface of the ground?

A. I could only tell approximately. Something near 120 feet. Possibly 120 feet.

Q. At what height did the water stand in the shaft before the connection was made with the tunnel?

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The first connection?

Q. The first connection.

A. I think about 60 feet; 60 or 65.

MR. CHAPMAN. Q. You mean from the surface of the ground?

A. From the surface of the ground, yes.

MR. BRITT. Q. And at what depth from the surface of the ground was the first connection made?

A. I thin k the first connection was some 65 feet.

Q. And at what depth below the surface of the ground was the second connection made?

A. I thin it was 25 or 30 feet below. This is all indefinite, because I don't remember. I only remember the condition as I saw it.

Q. Those connections you speak of were made between the wells and the tunnels through galleries?

A. The first 2 connections were made between the well and a shaft reaching down to the tunnel about 8 feet to the west. The last connection made connected directly with the tunnel.

Q. The 2 connections connected with what?

A. With a shaft.

Q. When that well was pumped at what depth below the surface was the pump placed?

A. I think it was placed at the surface of the water, at the water level when it was first placed, and as the well was pumped the water receded, and it was with that intention that we did the pumping-- to lower the water level at that time in order that we could make connection with the tunnel. And after that the pump was lowered to meet the condition caused by the lowering of the water plane.

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Q. When it was first pumped then I suppose that the pump was placed virtually at the water level of the tunnel, and when I say "first pumped" I mean for the purpose of supplying water; I do not refer to those preliminary pumpings in order to make a connection between the tunnel and the well. Is that right? That the pump as first placed was virtually at the level of the tunnel?

A. No, it was first above the tunnel level, if I remember rightly, in order to get rid of the water that was above the tunnel level in the shaft.

Q. All right. Then when the well was pumped in order to obtain the supply of water, and not merely for construction purposes or to connect the well up with the tunnel, but to get a supply of water for the purposes over at Ontario, was the pump placed at the level of the tunnel?

A. I think the pump-- eventually the water went down and it was lowered down to the level of the tunnel.

Q. Was it ever lowered below the level of the tunnel?

A I don't think so.

Q. Going over to the so-called Sixteenth Street wells, at what depth was the pump placed in well number 1-- the western most well of that series?

A. I don't know. It was placed down to the water level at that time. I don't know how deep in the well. That is part of the work that I pay very little attention to. As president of the company I simply order our workmen and the superintendent of the works to do certain things; but as far as the level was concerned I paid very little attention to it.

Q. Was the pump lowered as the water plane receded?

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A. Yes, sir.

Q. And what was the greatest depth to your knowledge at which the pump was placed in that well number 1 at any time?

A. I don't know. I have no figures that would--

Q. What is that?

A. I say I can't give you figures on that subject.

Q Have you any source of information at the company's office?

A. It is possible that I may be able to.

Q. Look that up if you please. Your answers would be the same in regard to the depth at which the pumps were placed in the other wells?

A. Yes, sir. I have no information as to the depth.

Q. Ascertain those things if you can and let us know when the court convenes again. I think at the time of the adjournment the other day you had made reference to another one of these reports ~~xxxxx~~ sent in by some of the engineers, but it had not been--

A. Yes; there are several of Mr. Trask's reports that I have not gone through with.

Q. Have you them arranged in point of date consequtively?

A. I think I have.

Q. All right. The first is dated what? August 23, 1895?

A. Yes; August 23, 1895.

Q. Read the whole report.

A. "San Antonio Water Company, B. C. Sheppard, secretary. Sir. I submit the following data for the consideration of the board of directors:

San Antonio tunnel, July 15, ~~xxx~~ 1:45 P. M., 89.31 inches.

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July 23, 11:30 A. M., 85.95 inches.

August 22, 5:50 P. M., 76.40 inches.

San Antonio Creek, August 22, 1895, divide dam

10 A. M. 839.5 in.

Spring Hill, 5 P. M., 799.5 in.

A difference indicated of 40 inches between the two points of measurement.

Q. These two last measurements are the same water?

A. The same water of which 512 inches belongs to Pomona.

THE COURT. Q. The divide dam is the same one referred to heretofore as the division dam?

A. Yes, sir. Do you want this note about the leakage of the weir?

MR. BRITT. Q. Oh, no. I don't care anything about that.

A. From the above , Ontario had on August 22, 1895, 496.15 miners inches, or a pro rata of 81.8 per cent.

Q. That does not include any water from this Eddy tunnel or from any of the sources about which evidence has been given here?

A. No, sir. That is the only one, I think, of the lot that doesn't. It is a very old report.

Q. The next in point of date?

A. Is March 8th, 1900. "San Antonio Water Company, B. C. Sheppard, secretary. Gentlemen:- On March 5th, I made water measurements and report the following results:

10:15 A. M. Bodenhamer tunnel, 6.74 ~~xxx~~ inches

11:15 A. M. San Antonio tunnel 53.70 inches.

11:45 A. M. San Antonio Creek Divide dam,

Gird flume, 19.68 inches.

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Large weir 298.55 inches.
That was the total flow of the creek, or, one-half 149.27 in.
Frankish and Stamm tunnel 2.54 inches.
1:45 P. M. Haskell well pumped 118.20 inches.
2:30 P. M. Stowell water 94.60 inches.
THE COURT. Q. What is meant by Stowell water?
A. The mouth running from the mouth of the Edy tunnel.
Total 444.55 miners inches.
April 7, 1900. San Antonio Water Company, B. C. Sheppard, secretary. Gentlemen. On April 1st, I made the following water measurements:
2:50 P. M. San Antonio Creek divide dam,
Gird Flume 19.78 inches.
Large weir, total flow of the creek, 234.1 inches.
One half 117.05 inches.
3 P. M. San Antonio ~~xxx~~ Tunnel 50.50 inches.
3:30 P. M. Frankish and Stamm tunnel 2.39 inches.
4 P. M. Podenhammer tunnel 6.74 inches.
4:25 P. M. Haskell well 118 inches
4:40 P M. Stowell water 94.15 inches.
Total 408.66 inches.
May 10, 1900. San Antonio Water Company, B. C. Sheppard, secretary, Gentlemen. The following are results of water measurements made by me May 7th, 1900, 11. A. M. ~~Sxxxxx Axxxx~~
San Antonio Creek divide dam, large weir 285.50 inches.
or one half 142.75 inches.
The one half is carried into the column for the supply of Ontario.
Gird flume 19.78 inches.

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San Antonio tunnel, estimated-- the Electric people were using the water and it couldn't be measured at that time-- 50 inches.

2:30 P. M. Frankish and Stamm tunnel 2.30 inches

3:15 P M. Bodenhamer tunnel 6.74 inches

May 8th, 1900, 1:30 P. M. Haskell well pumped 120.90 inches.

2.25 P. M. Sixteenth Street well pumped 53.65 inches.

MR. BRITT. Q. That Sixteenth street well referred to there is the present well number three?

A. Yes, sir.

3.25 P. M. Stowell water 105.55 inches.

MR. HASKELL. Q. What date was that Mr. Locke?

A. That was June-- the last date was June the 5th.

MR. BRITT. No, I thought you laid aside that paper?

A. 501.67 inches total on this date May 8th.

MR. HASKELL Q. May 8th, 1900,

A. Yes, sir. Ontario, California, June 6th, 1900. San Antonio Water Company, B. C. Sheppard, secretary, Gentlemen. The following are water measurements for June:

June 4, 0.30 P. M. San Antonio Spring Hill 311.5 inches.

Card water 19.56 inches.

Large weir 256.5 inches, or one half for Ontario 128.25 inches

2.20 P. M. San Antonio tunnel estimated at 50 inches.

2:40 P. M. Frankish and Stamm tunnel 2.30 inches

3:20 P. M. Bodenhamer tunnel, 6.24 inches.

June 5, 8:30 A.M. Stowell water 96.80 inches.

11:30 A. M. Haskell well pumped 99.10 inches.

12 M. Sixteenth street well pumped 50 inches.

Total 452.3 inches.

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Ontario, California, July 5, 1900. San Antonio Water Company R. C. Sheppard, Secretary: Gentlemen. The following are the results of my July water measurements.

July 1st, 1900 2 P.M., San Antonio Creek

Divide Dam, Large weir, 218.25 inches.

or one half , 109.12 inches.

Gird water 20.17 inches.

2:15 P. M., San Antonio Tunnel, estimated 50 inches.

2:45 P. M. Frankish and Stowe tunnel 2.24 inches.

3:30 P. M. Bodenhammer tunnel 6.20 inches.

July 3, 1900,8 A.M., Sixteenth street well 81.50 inches

10:35 A.M. Haskell well 101.65 inches.

0:30 P. M. Stowell water 78.45 inches.

Total 449.33 inches.

At a point where Stowell's tunnel enters 90 acre tract, flowing from Stowell land, 115.75 inches.

Measuring box 78.45

shortage -- evidently a leak some where in the conduit-- 37.33 inches.

August 9, 1900, R. C. Sheppard secretary, Ontario , California. Dear Sir. I enclose following results of water measurements made by me:

July 20, 1900 1:30 P. M. Stowell water 84.85 inches

July 25, 1900, 8 A.M? Stowell 83.10 inches

July 25, 1900, 9:50 A. M., south of Stowell tunnel 57.60 inches

August 6, 1900, 9:45 A. M. San Antonio Creek,

Spring Hill, 229.50 inches.

10:35 A. M. San Antonio Creek, Divide dam,

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Large weir, 176.55 inches.,
or one half for Ontario 88.27 inches.
San Antonio tunnel, estimated , 50 inches.
Frankish and Stamm tunnel 2.05 inches.
0:30 P. M. Bodenhamer tunnel 6.20 inches.
August 7, 1900, 10 A.M. Stowell water 103.70 inches.
11:40 A. M. Sixteenth street well pumped 11.16 inches.
12 M. Haskell well not pumping.
Total supply 271.36 inches.
There is a supplementary measurement later at 10:20 A. M.
South of Stowell tunnel, 55.65 inches.
and 11:10 A. M. entering 90 acres tract, northwest
corner, 110.30 inches.

September 1st, 1900. B. C. Sheppard, secretary, Ontario, California, Sir. I give below the results of water measurements made by me:
August 25, 1900, 10:20 A.M., Stowell water 98.95 inches.
August 31, 1900, 11:10 A.M. Stowell water 99.90 inches.
August 31, 1900, 12 M., in tunnel entering 90
acre tract 107.5 inches.
0:20 P. M., Sixteenth street well pumped 99.10 inches.
1:30 P. M. Haskell well pumped, 110:70 inches.
September 1st, 1900, 9 A.M., San Antonio Creek,
Large weir, 160.70 inches
or one half, 80.35 inches.
Gird water 19.71 inches.
9:15 A. M. Frankish and Stamm tunnel 1.75 inches.
10:15 A. M. Bodenhamer tunnel 5.90 inches.

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San Antonio tunnel estimated at 50 inches.
Total supply 467.41 inches.
Here the court takes a recess until 2 o'clock.

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Afternoon Session.

MR. BRITT. Q. Now, we are getting pretty well toward the end of that series of reports: produce the next one.

A. Ontario California, October 10, 1900, San Antonio Water Company, B. C. Sheppard, secretary, Gentlemen:- The following are the results of my October measurements:

October 8th, 1900, San Antonio Creek Divide Dam,
Large weir, 136.75 inches.
one half 69.37 inches
Gird water 18.74 inches.
11:40 A. M. San Antonio tunnel, estimated 50. inches
12:15 P. M. Frankish and Steam tunnel 1.50 inches.
1 P. M. Bodenhammer tunnel 6.10 inches.
October 9, 10:30 A. M. Sixteenth Street well 83.66 inches.
12 M. in Stowell tunnel shaft number 8 99.40 inches.

Q. What was that measurement? A measurement made in the tunnel somewhere other than the mouth?

A. I think so: yes, sir.

Q. Do you know how far that shaft number 8 is from the mouth of the tunnel?

A. I don't know it by that designation, but I presume it is the shaft we have used as a measuring shaft immediately south of the line of the Ontario Power Company's lands in the tunnel.

Q. How far from the mouth of the tunnel?

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A. It is on the north side of what is termed the 90-acre tract.

Q. Right at the north line?

A. Right at the north line.

0:30 P. M., Haskell well no. 2, [illegible] inches.

Haskell well no. 1, dark down.

1:10 P. M. south of Stowell tunnel, [illegible] inches.

2 P. M., Stowell water [illegible] inches.

Total water for Ontario, [illegible] inches.

Q. Proceed with the work.

A. "Ontario, Cal., January 18, 1900. San Antonio Water Company--

Q. Is that 1900 or 1901?

A. 1900.

Q. It harks back then?

A. Yes, sir; to the previous year. San Antonio Water Company, H. T. Gaylord, Secretary. Gentlemen, On January 14th I made measurements of the Ontario water supplies and report the following results:

9 A. M. Divide dam, San Antonio Creek, large weir, 248.754 inches. One half, 124.87 inches.

Chaffee flume water, 20.90 inches.

9:30 A. M. San Antonio tunnel 88.36 inches.

10 A. M. Turkish & Jones tunnel 2.09 inches.

10:30 A. M. Bohnhoff tunnel 5.40 inches.

11:30 A. M. Stowell water 104.25 inches.

Total 350.94 inches.

Mr. Stevens: Q. Does this Stowell water mean just the proportion of water from the tunnel that belongs to San Antonio Water

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Company got as distinguished from the entire amount flowing?

A. Yes, sir.

Q. That is just the San Antonio Water Company's part of it?

A. Yes.

Mr. Haskell: Q. What did you say the Stowell water was?

A. 138.25 inches.

Mr. Britt: Q. Go on with the next report.

A. "Ontario Cal. February 10, 1900. San Antonio Water Company, B. C. Shepherd, Secretary: Gentlemen. The following are results of water measurements made by me on February 1st, 1900.

10:30 A. M. San Antonio Creek, Divide Dam, large weir, 287.86 inches; one-half 143.92 inches.

Gird flume, 19.25

San Antonio tunnel at 11 A.M. 56.95 inches.

12 M. Frankish & Stamm tunnel, 2.24 inches.

1 P. M. Bodenhamer tunnel 6.[illegible] inches.

Total supply 229.27 inches.

No water flowing from Stowell supply as the [illegible] was turned at the wall. Pipe line was being repaired.

These reports are signed by F.M. Trask.

Q. All of these reports which you have read this morning are signed by Mr. Trask, are they not?

A. Yes, sir.

Q. During all those times was Mr. Trask an engineer in the employment of your company-- the San Antonio Water Company?

A. Yes, sir.

Q. How often did Mr. Trask make such reports to the company?

A. I think once a month.

Q. Not oftener than that?

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A. I think not.

Q. Have you any of his reports made subsequently to the year 1900 in form like these which you have read here? The last of these is dated October, 1900. Have you any lat or than that?

A. I have some reports for the last year; possibly running into the previous year.

Q. Have you any in 1901 and '2?

A. No.

Q. Or '3 or '4?

A. I think not.

Q. Have you made search in your office or elsewhere for those reports of your engineers showing the output of water?

A. Yes, sir; since the adjournment of court last week I looked into the matter more particularly, and Mr. Trask informed me that he had in his possession reports that bear upon that subject.

Q. Mr. Waters about the time of adjournment last Friday mentioned the daily and weekly reports of the superintendent or foreman in charge of the wells during the pumping season. Did the company receive such reports?

A. Such reports-- I have refreshed my memory since last week, and I find that such reports were made and transmitted to Mr. Trask in Los Angeles, and Mr. Trask has kindly furnished me with those reports.

Q. You have them here now?

A. Yes.

Q. Let us see them, if you please.

A. I want to say that I didn't know about these reports.

Q. Yes; I understand, Mr. Locke. This sheet here seems to

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begin with May 25, 1904. It runs progressively after that . This sheet seems to be the next year-- 1905. Are there any of these sheets for the years previous to 1904?

A. Not to my knowledge

Q. Now, with a view to shortening the evidence relative to these sheets which are now produced, I will ask you, Mr. Locke, to allow us to examine them a little later in the court room, and I will pass from that to some other matters at present. There are some features of the reports which to my mind, at any rate, will require some explanation, and I would like to have the assistance of Mr. Wright and, possibly, Mr. Trask; and if the Court will allow me, we will let the matter of these sheets remain in abeyance for the present and pursue some other branch of Mr. Locke's testimony.

Q. Mr. Locke, the pipe line from the mouth of the Rady tunnel conducting the water thence westward toward the place of consumption, extended to what point? Uplands or Ontario?

A. It extended-- when it was laid there was no Uplands; it was simply the Ontario Colony at that time, with the town of Ontario in the south; and the pipe line extended to a box in the Ontario Colony, and from there radiated in different lines and directions, covering the irrigation and also the domestic system.

Q. This place called Uplands is the same place formerly called North Ontario, is it?

A. Yes, sir.

Q. Are both Upland and Ontario included within what you term the Ontario Colony?

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A. Yes, sir.

Q. Has that pipe line now the same situation that it had in the year 1900? The main pipe from the mouth of the tunnel?

A. The main pipe didn't exist in 1900.

Q. When was the main pipe constructed?

A. In 1902.

Q. Leading from where?

A. The smaller pipe was constructed earlier, leading from the mouth of the tunnel to the distributing box and lines to Ontario Colony.

Q. A distance of how much?

A. I presume the Ontario Colony lands-- the map would give the figures exactly. It is a comparatively short distance to the Ontario Colony lands-- the west. Perhaps ahalf a mile and perhaps a little longer; I am not sure.

Q. Was the water received into a reservoir?

A. The water was received at that point into a box which was called the Stowell measuring box because it was placed on the borders of the Cucamonga Fruit Land Company which the Ontario Colony lands abutted.

Q. How far is that from the mouth of the tunnel? Is that what you call a place about half a mile distant?

A. Yes, sir.

Q. Then the water was taken over to the Ontario Colony through a pipe line?

A. The Ontario Colny lands begin at that box.

Q. Did the consumption of water begin at that box?

A. There is some consumption from there-- from that point.

Q. For what purpose?

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A. Irrigating some twenty acres of land immediately south.

Q. Then is the main body of the water taken further west to any reservoir or other receptacle?

A. It is taken further west to a box and distributed in various pipes.

Q. How much further west is that box?

A. I can only guess at it. I don't know the distances.

Q. That is all I am after; an approximation.

A. I should judge half a mile, perhaps, or more, west of the Stowell measuring box.

Q. Do you know the elevation above sea level of that last measuring box?

A. No, sir.

Q. What street is it on in the Ontario Colony?

A. It is a little north-- It is a little more than a ten-acre block north of Tenth street.

Q. Do you mean a ten-acre square block?

A. It is nearly square. Those tens of the colony are very nearly square.

Q. Does that system radiating from that box cover the Ontario Colony lands lying south or southerly from it?

A. It covers part of them.

Q. How is the water which was received from the Sixteenth Street well and from the Haskell well transported for use to what you call the Ontario colony? Through a pipe line?

A. Yes.

Q. That lies to a considerable distance further north than the pipe which you have just been describing a few moments ago?

A. Yes, sir.

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Q. About how much further north?

A. Probably a mile and a half, nearly.

Q. Is that pipe taken over to a reservoir or to a box from which the water is distributed into the service pipes or mains?

A. Our water runs through several boxes. It passes through the colony and is distributed in several boxes that it passes through. We have a system of boxes following down each ten-acre tract or in the center of the twenty-acre tract-- running between two tons, through the colony.

Q. What is the distance from, let us say, the Haskell well by way of that pipe line through the Ontario colony?

A. In those distances, I would much prefer that you would give me an opportunity to scale the map.

Q. Oh, certainly; but we haven't any map here that shows that.

A. I don't like to answer questions simply on a guess. I prefer to be more accurate if possible. I should say possibly a couple of miles. Do you mean continues with the water, or where we first begin to use it?

Q. The question was the distance between the Haskell well by way of this pipe line to the lands within the Ontario colony. That would mean the most easterly part of those lands.

A. I presume a quarter of a mile to the Ontario Colony lands

Q. The Ontario Colony lands are not more than a ~~quarter of~~ quarter of a mile from the Haskell well?

A. I think not much more than that; very little more.

Q. And what is the distance from that Haskel well by way of that pipe line, approximately, to the place within the Ontario colony where the water is taken out for use and distributed to

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one or more of those boxes?

A. It is a mile and a half or two miles. It is very difficult for me to give a definite idea.

Q. What is the first means of diversion from the pipe? Where is the pipe first discharged into a box?

A. I am not very familiar with the connections on that pipe line after it strikes the cultivated lands of the colony. I presume it is diverted into different boxes and lines it passes over through the colony, but I haven't been over the line and I don't know as I was ever over it through the Colony lands.

Q. What is the size of that pipe?

A. I can't give you the size

Q. On what street of the Ontario colony is the water first taken out of the pipe or distributed from the pipe into the mains for distribution?

A. I can't tell you that. I know it strikes Euclid Avenue at Fourteenth street, but it goes diagonally south when it strikes there, from Sixteenth street, and I can't tell where the first diversion of water occurs on the line. I am not familiar with it and that is a matter that I left to our engineer and zanjeros.

Q. Do you know whether the pipe is laid on a uniform grade?

A. I couldn't tell you.

Q. You don't know what the grade is?

A. No, sir.

Q. Do you know what the elevation of the place where the water is received in Ontario colony-- one of those boxes-- where it is taken into other pipe lines-- what the elevation

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is as compared with the elevation of the Haskell well?

A. I don't know; I can't say.

Q. Now this water which comes down and is taken by your company from the San Antonio Canyon, how does that come down to the Ontario colony? Through a flume, ditch or pipe line?

A. From the division dam south for possibly five or six hundred feet it goes through an open cement conduit. That point is below the point of the conduit that enters the cement pipe line--

Q. I don't care about that exactly. Is it brought down through a cement pipe line?

A. Yes, sir; and in some instances a vitrified pipe line.

Q. Connecting with the open cement ditch through which it is diverted?

A. Yes, sir.

Q. Tell us is there not a double pipe line from the mouth of the tunnel extending westward toward the Ontario Colony lands?

A. You refer to the Eddy tunnel?

Q. Yes; the Eddy tunnel.

A. Yes, sir; two lines

Q. And those connect at what you call the Stowell measuring box?

A. They connect with the Stowell measuring box, but they continue as two lines further over into the colony.

Q. How much further over?

A. Probably half a mile.

Q. Are they the same size west of the Stowell measuring box that they are east of the Stowell measuring box?

A. I think they are. I am not positive.

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Q. Don't they finally merge in the lands of the Ontario colony into one conduiit?

A. Into one box, and there the distribution occurs into the various lines.

Q. The water from both pipes is taken out into one box? And from there distributed into the service mains?

A. yes, sir.

Q. Do you know the relative size of those two pipes? Are they equal?

A. No; one has a little larger carrying capacity than the other..

Q. Which has the larger capacity?

A. The north pipe.

Q. Does one belong to the San Antonio Water Company and the other to the Ontrio Power Copany?

A. My impression is that they both belong to the Ontario Power Company as far as the Stowell measuring box. I am not sure about that. I don't know exactly the terms--

Q. How is it west of the Stowell measuring box?

A. The larger one to the Ontario Power Company and the smaller one to the San Antonio Water Company.

Q. How much of the stock of the Ontario Power Company is owned by the San Antonio Water Company? I am speaking now of the corporation and not the individual stockholders.

A. The San Antonio Water Company owns all the stock of the Power Company except that which is held for directorate purposes by the directors.

Q. How much do each of those directors hold? One share?

A. I think it is five shares.

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Q. And the total number of shares is how many?

A. I can't give you that without reference to our books.

Q. The San Antonio Water Company holds all the stock except such as is issued to the directors to qualify them to be directors?

A. Yes, sir.

Q. How long has that ownership in the proportion which you have mentioned continued?

A. Since the spring of 1902.

Q. Is it a fact that the Ontario Power Company does not use any of the w ter brought through these two pipes that you have mentioned, for power purposes?

A. Yes, sir; it is a fat.

Q. Does the Ontario Power Company generate any power at all by the use of the ater?

A. Yes, sir; in San Antonio Canyon.

Q. Has it a power plant in San Antonio Canyon?

A. yes, sir.

Q. Then San Antonio Canyon is north or northwest from the lands of the Ontario Colony?

A. North of west.

Q. This morning you stated that the Eady tunnel was connected in the manner which you have described with your well no. 9 or well no. 14 as indicated on exhibit no. 1 now on file, in the year 1902. Is your recollection definite on that or is it subject to be corrected by reference to any data or account books?

A. I feel quite certain that it is correct.

Q. Are you able to say what time in the year the connection

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was made?

A. I can't give the exact time. My impression is that it was about mid-summer. I don't mean by this that the entire work was done, but simply the first connection.

Q. That would be by means of the first false tunnel?

A. Yes.

Q. And the final connection with the tunnel proper was made about what time in the season?

A. I don't think it was made in that year. The period of time of connecting with that tunnel extended out quite a length and ran into the next year and possibly longer. I am not sure.

Q. Do you know the depth of that well number 9?

A. I have no definite knowledge as to its depth. I have a recollection that it was reported to us as something over 700 feet, but I find no data in my office by which I can make an absolute statement.

Q. Was it deepened by the Ontario Power Company after that company assumed its control?

A. No.

Q. Was it deepened after the connection made in 1902?

A. No; the shaft, I think, was deepened to a very small extent but the well itself has never been deepened.

Q. Was the well cut off at the level of the shaft-- the casing? Was it cut off at the level of the shaft?

A. I cannot tell. I presume it was at or near the level, but I don't know. You asked me to bring the deeds of the Rubio tract.

Q. Oh, yes; yes; I did. Are you familiar with the manner of keeping these reports that you referred to here a while ago?

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--Weekly and daily reports of the water from the various wells?

A. No, sir; I paid no attention to them.

A. I notice that some of them-- for example, the sheet here dated October 12, 1904,-- apparently has the columns filled with figures under the designation of horsepower-hours, and none other. Do you know what is meant by that? If you are not familiar with the mode of keeping that, or its significance, p probably you can't tell.

A. No; that is matters that were intrusted the engineer entirely.

Q. You have those deeds relating to the Rubio property?

A. Yes, sir.

Q. Made by Rubio to yourself and by yourself to the San Antonio Water Company?

A. I purchased of Mr. Nelson. Mr. Nelson purchased the place of Mr. Rubio and I purchased the place from Mr. Nelson. I afterwards deeded the water right to the San Antonio Water Company.

Q. Let me see the deed-- the one earliest in time.. Andrew Rubio to Peter Nelson. This first deed which you produce and which bears date May first, 1902, purporting to have been made by Andrew Rubio and Mary B. Rubio, his wife, to Peter Nelson, purports to convey lots 5, 6, 11 and 12 in block 20, of the lands of the Cucamonga Homestead Association. Do you know which of these lots contains the well? which has been referred to as the Rubio well.?

A. There in the ranch-- there was 58 acres and a fraction, and the well itself was situated-- I can't give the lot.

Q. You don't know on which one of those lots the well was situated?

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A. No, sir.

Mr. Britt: I don't care to incumber the record with all of these deeds at length. The names of the parties, the dates and descriptive portion is as much as I care to put into the record.

Mr. Chapman: And you can give the book and page of the record.

Mr. Britt: Very well. We offer this deed showing a conveyance made by Andrew Rubio and Mary B. Rubio, his wife, May first, 1902, to Peter Nelson, and purporting to convey the lots of land which I stated above a few moments ago, together with all water and water rights, pipes, flumes and ditches thereunto belonging or in any wise appertaining. Parties of the first part, grantors, reserving to themselves the twenty-two horse-power gasoline engine, jack and pump, now in and upon the said premises, together with all loose pipe thereon, the title to which is to remain in and the same to be removed by parties of the first part within 60 days from the date hereof. The consideration named is $25000. Recorded May 5, 1902, in Book 311 of Deeds, page 365, records of San Bernardino County.

Q. Now let me have the deed from Nelson to you.

Mr. Britt: Next, a deed bearing date September 8, 1902, from Peter Nelson and Julia Nelson, his wife, to W. T. Locke, consideration expressed, $10 and other considerations (the other considerations not specified), purporting to convey lots 5, 6, 11 and 12 in block 20 of the Cucamonga Homestead Association lands, as per plat recorded in Book 6 of Maps, page 46, records of San Bernardino county; containing 56.73 acres of land, more or less; subject to a right of way for a pipe line heretofore granted to the San Antonio Water Company. Recorded September 24th, 1902, in Book 312 of Deeds, at page

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219, records of San Bernardino county.

Q. Now, the deed from yourself, I presume, would be the next one, to the San Antonio Water Company.

A. There are two of them. That is the first..

Mr. Britt: Next, the deed of date the 20th of June, 1903, Between William T. Locke, grantor, and the San Antonio Water Company, a corporation, grantee, consideration, the sum of $10 and other good and valuable considerations (not f rther specified) and purporting to convey to grantee, its successors and assigns the right to sink, deepen and enlarge wells; run, excavate and construct ditches, tunnels, pipe lines, reservoirs, aqueducts and conduits for the conveyance distribution and storage of water; and all necessary and convenient rights of way to carry out said purposes, in, over and upon, lots 5, 6, 11 and 12 in block number 20 of the lands of the Cucamonga Homestead Association, as per plat recorded in Book 6 of Maps, page 46, records of San Bernardino county, a d containing 58.73 acres of land, more or less; intending to convey to grantee any and all water or water rights, and the exclusive right to develop water upon said premises or any part thereof; reserving only therefrom and providing that grantor retains the righ t as appurtenant to the said land to pump whenever he may so desire from the well now upon said premises an amount of water for use upon said land and not elsewhere, equal to a continuous flow of 8 inches of water measured under a four-inch pressure. Said deed is recorded July 2, 1903, in Book 335 of Deeds, page 45, records of San Bernardino county.

Mr. Chapman: This deed from Wilson and wife to Mr. Locke

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expresses that it is subject to the taxes for the current year and a mortgage of $15000, which taxes and mortgage grantee assumes to pay.

Mr. Britt: I observed that, but I didn't think it had any materiality.

Q. The next deed from you to the company, Mr. Locke.

Mr. Britt: Deed of W. T. Locke to the San Antonio Water Company , a corporation, of date March 24, 1906, purporting to convey part of lots five, six and twelve in block twenty of the tract of land of the Cucamonga Homestead Association, according to a plat thereof appearing of record in Book 6 of Maps at page 46 of the records of said San Bernardino County, described by metes and bounds as follows: Commencing at a corner stake on the north line of said lot 5 distant 145.98 feet from the northeast corner of lot 11 in said block 20, thence south 15° 31' east six hundred and sixty feet to a corner stake, thence south 44° 20' east 725 feet on the south line of said lot 12, thence westerly along the south line of said lot 12 and the south line of said lot 6 to the southwest corner of said lot 6, thence northerly along the west line of said lot 6 and the west line of said lot 5 to the northwest corner of said lot 5, thence easterly along the north line of said lot 5 to the place of beginning, containing 18.4 acres, more or less." Also a right of way for a road between said lots 11 and 12 and between and across said lots 5,&6, ~~it and it~~ ~~may be changed in the deed from the~~ as said road now exists, the intention being to convey all of said lots 5 and 6, 11 and 12 not conveyed in the deed from the party of the first part herein to J. J. Atwood and P. [illegible]

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Walline, and all subject to a mortgage for $15000 on the property, from which mortgage the party of the second part agrees to hold the party of the first part harmless. Recorded April 21, 1906, in Book 375 of Deeds, page 152, records of San Bernardino county.

Q. Is there any other deed affecting the water rights and the land under which the San Antonio Water Company claims?

A. In the deed to Atwood and Walline they have the right to pump water for the land.

Q. Is the so-called Rubio well situated on this last tract of 18.4 acres?

A. No, sir; it is situated on the land deeded to Atwood and Walline.

Q. Have Atwood and Walline ever conveyed to the San Antonio Water Company? A

A. No, sir.

Q. Then the land including that Rubio well is owned at the present time, so far as you know, by Atwood and Walline?

A. Yes; I have been told that Mr. Atwood holds the title at present. I have been so told.

Mr. Britt: It is understood that the deeds are in evidence to the extent that I have read, and with that understanding they can be returned to the witness?

Mr. Chapman: Yes; and if we want anything further from them we can introduce it.

By Mr. Haskell: Q

Q. As I understand you, the San Antonio Water Company diverts water into its water system taken from the San Antonio Canyon, do they not?

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A. Yes.

Q. And that San Antonio Water system extends from the San Antonio Canyon throughout the Ontario Colony lands, does it not?

A. Yes, sir.

Q. You also take water from the Cucamonga Canyon, do you not? And distribute it through the same water system?

A. Not directly.

Q. Do you do it indirectly?

Mr. Chapman: We object to that on the ground that there is no sufficient foundation laid for the testimony. This witness is not shown to be an expert. I suppose what he means is that they take the water from those wells.

Mr. Haskell. That is not my intention. Do you take any of the surface flow from the Cucamonga Canyon?

A. We don't distribute any of the surface flow directly into our pipe; no.

Q. Do you have a tunnel at the mouth of the Cucamonga Canyon into which you take water?

A. The Frankish & Stone tunnel is located on the debris cone west of Cucamonga Canyon. It doesn't extend into the mouth of the canyon.

Q. But you do get water in a tunnel in the neighborhood of the mouth of the Cucamonga Canyon, do you not?

A. Yes, sir.

Q. And divert it into your water system?

A. Yes, sir.

Q. The same water system that extends throughout the colony lands which you irrigate?

A. Yes, sir.

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Q. At the present time as between the San Antonio Water Company and the people of Pomona, the San Antonio Water Company takes approximately half of the water, do they not?

Mr. Gregg: Half the water of what?

Q. The surface water.

Mr. Gregg: Of what?

Q. Of the San Antonio Creek.

A. We take half the water of the San Antonio Creek when it falls below 624 inches.

Q. How is it when it is above 624 inches?

A. We turn over to the Pomona people 312 inches.

Q. And who takes it then?

A. We take the remainder.

Q. Is all of that water at the mouth of San Antonio Creek, of the surface flow, diverted at the present time?

A. No, sir.

Q. Isn't there a large stream of water running down the wash of San Antonio Creek that is not diverted by your company?

A. Yes, sir. Pardon me. Since I was on the ground I understand that we have begun irrigating, and I am not sure how much of the stream is flowing down there now.

Q. How long ago were you there?

A. I think it is about ten or twelve days.

Q. When did you begin to irrigate?

A. We began to irrigate about that time.

Mr. Britt: Q. What year?

A. The present year.

Mr. Hakell: Q. That is the first time there has been any call for irrigation this year, isn't it?

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A. I can't say about that. Our zanj eros are instructed to supply all those who desire water from our system at any time during the year when the regular irrigation is not in force.

Q. Now on the 10th day of May, 1907, you did open a bulkhead that had theretofore during a portion of this last winter been retaining the waters of the Eady tunnel, did you not?

Mr. Chapman: We object to counsel crossexamining the witness.

The Court: Do you claim to be crossexamining, Mr. Haskell?

Mr. Haskell: No, sir; direct examination.

Mr. Chapman: Then we object to it as leading.

Q. I will re-frame the question. On May 10, 1907, did you or did you not take water from the Eady tunnel-- or the San Antonio Water Company take water from the Eady tunnel

A. There has been a small amount of water running from the Eady tunnel dring the entire year. We take a portion of it.

Q. Did you increase the amount that was taken on the 10th day of May, 1907?

A. How increase it?

Q. How much water did you take on the 10th day of May, 1907, from the Eady tunnel?

A. I can't tell you.

Q. Did you take more on the 10th day of May, 1907, than you did before that?

A. I can't tell you that.

Q. Do you remember whether or not you have been taking more water since the 10th day of May from the Eady tunnel than you did before?

A. I have understood that the water from the Eady tunnel had increased somewhat recently, and I presume there is more running

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now than on that date.

Q. Who has charge of the distribution of the San Antonio Water Company?

A. Our zanjero.

Q. Are you not an officer of the San Antonio Water Company?

A. I am.

Q. Doesn't the San Antonio Water Company get its orders from you as an officer of that company?, as to where and when it shall take water?

A. It does.

Q. Didn't you order them to take water from the Eudy tunnel for irrigation purposes at or after the 10th day of May, 1907?

A. The only order that I have issued in that particular is to the Zanjero to see that he received our pro rata of the water flowing from that tunnel.

Q. And you gave that order irrespective of whether there is water running to waste from the San Antonio Canyon or not, do you?

A. I gave orders to utilize all the water running into the system as far as possible.

Q. Please read the question to the witness. (Question is read.)

A. I don't understand the bearing of the question. I can't see the force of it.

Q. In other words,-- if you don't understand it I will withdraw that question. Do you direct your sub-agents or employes of the San Antonio Water Company to first make use of all the waters of the San Antonio Canyon running on the surface before drawing water from the Eudy tunnel?

Mr. Chapman: We object to the question on the ground that it

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is cross examination from the beginning.

The Court: I wouldn't want to rule quite so broadly as that, but it is a close approximation.

Mr. Haskell: I asked questions which seemed to be plain and simple to me and the witness says he doesn't understand them. I don't intend to ask for something that this witness cannot answer readily.

The Court: You misconceive the answer of the witness. He said he didn't understand the purport or drift of it.

Mr. Haskell: That is no reason for the witness to refuse to answer.

The Court: That may be; but it is no particular reason that you should withdraw the question.

Mr. Haskell: I did that so as to adapt myself to the understanding of this witness.

The Court: I don't think you need worry about his understanding

A. No, sir; for the reason that they have a continuous run-off in the Eady tunnel, and we utilize that water in some instances where we cannot utilize the water from the canyon, and more especially during the last few weeks, on account of a serious breakage in our line bringing the wter down from the San Antonio Canyon we have had to look more especially after all of the sources of supply that were running water at that time.

Q. Do you have to use irrigation water in the Ontario lands throughout the winter months?

A. In a season of light rainfall we do.

Q. In a season of fair and average rainfall do you?

A. Yes, sir; for the reason that the average rainfall is not equally distributed over the season, and sometimes part of the

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winter is very dry. We raise summer crops, and of necessity we require ~~xxxxxx~~ water in the winter season when the rainfall is not equally distributed over the winter, although it may be in toto a fair rainfall.

Q. Did you use water for irrigation there this winter?

A. I am not so sure about the early part of the winter. It is quite possible we did between rains. I am not sure about that. The manjoro has orders to turn water on to the ranches during the winter season when water is plentiful, irrespective of special orders from me, to simply carry out the desires of the different ranches when they want water.

Q. As a matter of fact, the call for water for irrigation during the ordinary rainy season is much less than it is in the summer time?

A. Yes, sir.

Q. Not twenty-five per cent. of what it would be in the summer time?

A. I wouldn't like to state a per cent. because there is such tremendous variation in the rainfall in different years.

Q. Well, take the last three rainy seasons as a standard: Was there a call for 25 per cent.-- was it 25 per cent. as great during the last three rainy seasons as it is in the heat of summer?

A. I think not.

Q. Now as a matter of fact during all the rainy seasons during which the San Antonio Water Company has had charge of the Eddy tunnel, they have taken the full flow of that tunnel through their pipe lines with the exception of this last winter, have they not?

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A. Not the full flow; only our percentage of the ownership of the flow in the tunnel.

Q. And you have taken that out and diverted it?

A. We have.

Q. What interest has the San Antonio Water Company in the Eady tunnel?

A. They have the right to pass through that tunnel-- an easement through it-- of 130 inches of water.

Q. The San Antonio Water Company obtained that right before th Ontario Power Company obtained any right, did they not?

A. Yes, sir.

The Court: Q. Are the rights of the San Antonio Water Company in that tunnel the same as they were before the Ontario Power Company was incorporated?

A. Yes, sir.

Q. There has been no change whatever?

A. No, sir.

Q. As I understand it, that is a right to take 130 inches from the 90-acre tract?

A. Yes, sir.

Q. You spoke of an easement in that tunnel: Is that easement a separate and distinct thing from the water, or simply the right to take so much water through the tract, whether it comes from there or elsewhere?

A. It has a right to run that 130 inches through the tunnel; from that tract and through the tunnel.

Mr. Gregg: Q. Are you not mistaken about that tract? The Judge mentioned the -90-acre tract.

A. That runs off of a piece of land owned by the Ontario

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Company immediately north of the 90-acre tract.

The Court: Q. The water, then, is not a part of the product of the tunnel at all? Or is it?

A. Not so far as the 90-acre tract is concerned. All the water seeping into the tunnel on the 90-acre tract goes to Cucamonga. We have no part or lot in any water except that which runs off of the tract of land north of the 90-acre tract, belonging to the Ontario Power Company.

Mr. Haskell: Q. Now, as I understood you, from your reports this morning, referring to the report of January 10, 1900, there was flowing out of the Eady tunnel on January first, 1900, 138.25 inches, was there not?

A. I think that is as I read it.

Q. I will say that I took these figures down and if there should prove to be any variance between what I ask and how the reporter has got it, I wish to have it understood that the reporter's figures are correct.

Mr. Chapman: You have got that correct. One of those measurements was 138 inches.

Q. Now in that same season, according to the report of July 5, there was flowing on July 3rd 78.45 inches to the San Antonio Water Company. I understood you to give testimony to that effect.

A. I think so. I can't verify it.

Q. Now at that time you were taking all of the water to which the San Antonio Water Company was entitled in mid summer, were you not?

A. I am not positive. I can't tell how much they were entitled to unless I refer to the records, and I couldn't tell

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whether the division was accurate or not. Sometimes there might be an inaccurate division of the water between the two companies.

Q. You insisted upon having what water was your due, did you not?

A. We insisted vainly some times.

Q. How much variation was there ever in the amount that you insisted you ought to have and that which you actually got?

A. I can't answer that except by reference to the engineer's figures.

Q. Would it amount to as much as 20 inches?

A. I presume there were times when there was a discrepancy of 20 inches.

Q. But not very much more than that?

A. No; I think not.

Q. At that time this water--

A. Pardon me. May I make a statement?

Q. Certainly.

A. The facilities for dividing water at that time were crude and imperfect .

Q. And the dispute arose out of the imperfection of the facilities for measuring?

A. Well, possibly.

Q. Now at that time the Ontario Power Company were getting no water from this tunnel, were they?

A. 1900? None at all.

Q. And they made their developments after 1900 down to somewhere about 1902, when they completed them, didn't it?

A. The Ontario Power Company-- I became an officer in that

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company in May, 1902. What their work had been previously to that, I am not prepared to say. The books indicate that they had done considerable work.

Q. But they completed their operations about 1902-- the Ontario Power Company?

A. The Ontario Power Company began their operations in the summer of 1902, and in the completion it ran over a year or two. I can't tell how long. I don't remember, but it is quite a long period.

Q. Then they were continually sinking wells and deepening the floor of the tunnel in the upper end, were they not?

A. They sank no wells, and did no deepening of the floor of the tunnel so far as I know, and I ought to know-- after I became an officer of the company. Previous to that time the company was not owned by the San Antonio Water Company. That is, the stock wasn't owned by that company. And the records show that they had at least contemplated doing some work.

Q. This well no. 14 was got in about that time-- in 1902-- wasn't it?

A. The land upon which the wellx is situated came into the possession of the Ontario Power Company some time, I presume, in 1902.

Q. And the well was cut into the tunnel about that time at its present level?

A. The well was cut into the tunnel on its present level some time after 1902. The work began in the summer of 1902 and continued over a year or two, and the last work done there was the correction of the lower levels.

Q. Since that well was cut in in its completed form on its

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present level, the San Antonio Water Company has got its flow of 130-odd inches which it has claimed, has it not?

A. Yes, sir; they got it before that also, I think. I don't know that there was any shortage before that.

The Court: Q. I wish you would explain for my benefit the attitude there in regard to the tunnel. I understand that you have a lease of a right of way through the tunnel of 130 inches of water which is derived from the tract north of the 90-acre tract.

A. Yes, sir.

Q. It seems that you have some method of division at the mouth of the tunnel, part of the water going to Ontario and part to Cucamonga.

A. Yes, sir.

Q. What scheme is there above this tunnel by which you can determine the amount of water that goes into it that belongs to the tunnel, so as to take out a certain portion below?

A. Just at the division between the 90-acre tract and the company's land we have a measuring shaft put down, with iron steps, and at that point in the tunnel there is a weir, and we measure the water pouring over the weir and running out on the 90-acre tract, and we measure that water and consider that water belonging to the San Antonio Water Company and the Ontario Power Company.

Q. That is the portion which you propose to get over the weir at the measuring box?

A. Yes, sir.

Mr. Gregg: Q. Haven't you made a mistake about that land? It isn't the water running out of the 90-acre tract, is it,

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that you measure over that weir?

A. The water running on to it.

The Court: I didn't understand him to say that. My question was as to the land north of the 90-a cre tract.

Q. Is there an automatic weir there to register itself, or is it measured daily?

A. It adjusts itself. There is a box where the water runs in and seeks its level, and there are two gates which are arranged by the engineers so that the proper portion of water should run to each company. That is, to the Cucamonga people a portion of it, and the other portion to our company.

Q. The water which you get from the north of the 90-acre tract, have the Cucamonga people an interest in that particular source of supply? What I mean is is the constant thing so that you take a certain fraction and they a certain fraction of the amount of water flowing?

A. Constant flow; continuous flow.

Mr. Chapman: Q. How was that?

A. The water from the tract of land immediately north of the 90-acre tract.

Q. The land both to the north and west?

A. This is the north line of the 90-acres.

Q. But the land that the Ontario Power Company owns lies both to the north and west of the 90-acre tract.

A. Yes; that is right; north and west.

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Q. But the tunnel cuts the boundary at the north boundary of the 90 acre tract?

A. Yes, sir.

Q. The north or the west boundary?

A. The north boundary.

MR. HASKELL. Q. I would like to ask one or two more questions. You speak of the break down in your watersystem in the San Antonio canyon: has that since been repaired?

A. The break in one of the pipes has been repaired. The breakage in the other pipes are practically irreparable and we are putting in a new line which is not yet complete.

Q. Isn't the capacity of your pipe line now such that you could take sufficient water to irrigate all your colony lands from that source?

A. It is not as much as we could; we are rushing that pipe line to the utmost.

Q. How much is the capacity of your plant from that source now? Upwards of 600 inches?

A. From the San Antonio Creek?

Q. Yes, sir.

A. I presume the pipe from the creek brings down something over 600 inches.

Q. The San Antonio Water Company carries the waters of the Ontario Power Company, through the Edy tunnel, through their right of way?

A. No, sir; it don't do it.

MR. CHAPMAN. Q. Coming to this Edy tunnel again, you spoke several times of 130 inches of water that you acquired before the Ontario Power Company had anything to do with the land

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or the tunnel either.

A. Correct.

Q. From whom did you obtain that?

A. We purchased that fro- the Cuca onga Fruit Land Company and from Mr. Stowell. I can't differentiate in that case very well.

Q. From what lands did that 130 inches come?

A. It came from the lands immediately north and west of th- 90 acre tract now belonging to the Ontario Power Company.

Q. And the Ontario Power Company after you acquired the 130 inches of water acquired the tract of land from which it came?

A. It did; yes, sir.

Q. The Ontario Power Company and the San Antonio Water Company taken together claim to own all of the waters coming from this land north and west of the 90 acre tract?

A. We do; yes, sir.

Q. You say that you have some way of measuring that water at the point where it enters the 90 acre tract?

A. We do; yes, sir.

Q. That determines the quantity ~~of the~~ ~~xxx~~ to which you are both entitled?

A. Yes, sir. Pardon me; there is one point I wish to mark right on that answer; the tunnel is now bulkheaded and the water is durin- th- present time, or durin- the last few months has risen in level so that measurin- apparatus is now covered with water.

Q. But I am speaking of the rights which you claim?

A. Yes, sir.

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Q. You claim the right to the 130 inches of the San Antonio Water Company coming from the lands north and west, and whatever comes above that belongs to the Ontario Power Company?

A. Yes, sir.

Q. And that you have got rented from them?

A. Yes, sir.

Q. The water coming into that tunnel on the 90 acre tract belongs to another company?

A. It belongs to another company.

Q. The Cucamonga Water Company. Now reading from your reports, you you did at some time, the date I don't remember, give the amount of water which the San Antonio Water Company was getting from this tunnel, 75 inches; and at another time 138 ; what do you say is the occasion for your not getting any more than the 75 inches? Did the report itself as you remember give any explanation of it?

A. None what ever; none.

Q. If your weir at the boundary line does not measure any more than 78 inches coming from that tract of land, at the time of the measurement, you do not get any more at the division do you?

A. That is true: yes, sir.

Q. You take it up to 130 inches and if more than that comes you also take it under your lease with the Ontario Power Company?

A. That x is correct.

Q. So the 138 inches whenever that occurs, that included the 130 inches that belonged to you and 8 inches in excess of that?

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A. It did.

Q. In the San Antonio Creek where do you the San Antonio Land and Water Company and the Pomona people divert the water from that stream? Where is that division box?

MR. BRITT. That is two questions in one.

MR. CHAPMAN. Q. It is the same thing, they divert water at the division dam, I believe.

A. At the division dam; yes, sir. And that division dam I cannot give the location of it without a map; I don't remember the section.

Q. Well, it is up in the canyon isn't it?

A. In the mouth of the canyon, yes, sir.

Q. About how far is it from there down to the town of Pomona?

A. I should judge 3 or 4 miles; 4 miles to the upper, and 6 perhaps --

Q. Isn't it a fact that below the division dam there are a great many people owning lands along the course of that stream?

A. Yes, sir.

Q. When any of the waters that pass your division dam become sufficient further down that stream, isn't it used by the parties down below there?

A. It is.

Q. They claim the right to do so?

A. They claim a right; yes, sir.

Q. Can you recall just about what the capacity of your pipes or conduits, whatever they may be, at this division dam is? About how much water will they carry?

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A. I presume the conduit at the division dam would carry 1500 inches, the open conduit.

Q. When it is there to carry?

A. Yes, sir.

Q. Has there been any irrigating season, I am speaking now of the summermonths, in the last 10 years, in which you and the Pomona people have not taken at that division dam all the water there is in the stream.

A. In the summer months?

Q. Yes, sir.

A. I think we have.

Q. Has that been the fact during most of the winters, during the last 8 or 10 years?

A. Yes, sir the majority of the winters.

Q. Is it not a fact that there has not been nearly so much water flowing in the San Antonio Creek for the last 10 years as there was for the 10 years previous to that?

A. I think it is.

Q. The division between you and the Pomona people-- I believe it has been stated 2 or 3 times but lest there be any mistake about it-- You divide it equally between the two of you until the amount reaches 624 inches?

A. Yes, sir; that is correct.

Q. When it gets over that Pomona gets 312 inches and you take the balance?

A. Yes, sir.

Q. You speak of the San Antonio tunnel; where is that?

A. It is a tunnel located about-- beginning about 4 four or five hundred feet south of the division dam and running

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under and across the bed of the San Antonio Creek at a point below where the water is diverted to Ontario and Pomona.

Q. And that water is taken to Ontario?

A. Yes, sir.

Q. It was run there for the purpose of getting the underflow that passed this dividion dam?

A. Yes sir.

Q. In giving the measurements of water in the San Antonio Creek you speak of 2 or 3 times of measuring at Spring Hill; where is Spring Hill with reference to the division dam?

A. About 3 miles north .

Q. prior to the year 1902 the measurement of the waters at the division dam plus the 19 or 20 inches of the Gird water, practically, measured the whole amount that flowed down to the division dam, did it not?

A. Yes, sir.

Q. The Spring Hill measurement is not something to be added to the measurement at the division dam but was a part of that measurement?

A. That is true.

THE COURT. Q. I don't know that I understand now where this Spring Hill measurement is?

A. It is about 3 miles above the division dam and immediately south of what is called the Sierra Power House.

Q. It is up in the canyon is it?

A. Yes, sir.

R. CHAPMAN. Q. It is si ply a double measurement of the creek? The excess which the measurement showed at the division dam, or the increase over the measurement at Spring

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Hill represents the water which rises from Spring Hill weir down to the division dam, does it not, or flows into the stream below that point?

MR. BRITT. That is asking for an opinion of the witness and it does not appear that Mr. Locke is an expert in matters of that sort or competent to give an opinion on that matter.

MR. CHAPMAN. Q. You recollecti that your measurements at the division dam showed a amount in excess of the measurement at Spring Hill?

A. You have it the wrong way. The excess measurements are always at Spring Hill and the lesser measurements at the division dam.

Q. Are you sure?

A. I am quite sure of it, in n arly every instance.

Q. At any rate the difference whichever way it may be, is just the difference between the two points of measurement?

A. Yes, sir; that is all; that is true.

Q. Your measurements only we t dow to the year 1900 that you have been giving here today?

A. Yes, sir.

Q. Since that time, since 1900 and up to 1902 the water of the San Antonio Creek is diverted by the Ontario Power Company far above Spring hill, is it not, and carried in a pipe down to the power house?

A. Yes, sir; about half a mile above Spring Hill it is diverted in a pipe.

Q. And is brought in a pipe along the mountain side to a power house and then discharged into the stream again just above the division dam.

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A. That is right.

Q. If I remember rightly that pipe line was laid in the year 1902?

A. Correct.

Q. What did you refer to as the Stowell tunnel?

A. The Stowell tunnel is what has been termed here the Edy tunnel.

Q. What did you refer to as the Stowell measuring box?

A. A box about half a mile west, possibly a quarter to a half a mile west, of the mouth of the Edy tunnel through which flowed the Ontario portion of the water from the Edy tunnel.

Q. Are the waters coming from these wells along Sixteenth street, or about that, conducted through the same pipe line either in whole or in part, with the water from the Edy tunnel, to the Ontario Colony lands?

A. They are conducted in part, when they reach the general distributing system of the colony, they all mingle.

Q. But there are two separate pipes up to that place?

A. Yes, sir.

THE COURT. Q. Where do they meet?

A. Well, they don't actually meet at all; but the water itself, the water from the upper system is turned in, say a mile and a half from the water from the lower system but it mingles as it comes down.

Q. Into the same general system of distributing pipes?

A. Yes, sir.

MR. HASKELL. Q. Those reports, where it referred to the Stowell water referred to water coming in the Edy tunnel did it not?

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A. Yes, sir.

MR. CHAPMAN. Q. But you used that term once or twice to include the water from the lands of the Ontario Power Company in addition to or in excess of the 130 inches that you got through Stowell?

A. Yes, sir.

MR. HASKELL. Q. Which two times were those?

A. When I included the--

Q. Yes, sir.

A. Well, I am not sure about the times; I know in a general sense in my own mind, I refer to the Stowell water as water coming from that tract because Mr. Stowell was very prominent in the conveying of that water to our company.

Q. Now a report will be made of this testimony of yours tomorrow; when that is handed in will you look over your testimony and be prepared to tell us which two times you refer to?

A. I don't know that I could get it down so fine as that. I could tell you what I know about it to the best of my ability.

Q. I would like to have you make that examination.

MR. CHAPMAN. Q. Whenever you referred to the Stowell waters and then gave a measurement of more than 130 inches did it include the water that came from that tract of the Ontario Land and Power Company? It did, did it not?

A. It was my belief that it did.

Q. Prior to the time that you entered into the relation with the Ontario Power Company you were not entitled to but 130 inches, were you?

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A. That is all.

Q. So when you got more than that the source of your title to it is from some place else than Stowell, isn't it? From some one else? Isn't that so?

A. I don't quite get the drift of that.

Q. You recognized the right of the Ontario Power Company to all the water that comes from the tract north and west of the 90 acres into this tunnel except the 130 inches?

A. That is true.

Q. So that when you got more than that it includes what you were leasing from the Ontario Power Company?

A. Yes, sir.

THE COURT Q. Have you as a matter of fact leased water from them in excess of the 130 inches?

A. Yes, sir.

R. WATERS. Q. Is the relation between the defendant San Antonio Water Company and the Ontario Power Company evidenced by a writing or writings?

A. Do you refer to the distribution of this water?

Q. I refer to anything commonly and ordinarily called "black and white"?

A. I don't know that there is a direct contract for the rental of this water. Anything more than the fact that by resolution if I remember correctly the San Antonio Water Company authorized the rental of this water at a certain rate per inch.

Q. You know that there are the two corporations, don't you?

A. Yes, sir.

Q. You know that they have got something to do with each

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other, don't you?

A. Yes, sir: certainly.

Q. Is that something evidenced by writing, do you know that?

A. I know we have leases and contracts between the company.

Q. Can you produce it. We want to know what kin these two individuals are; do you understand that?

A. I don't think we have any contract for the rental of water, any direct contract: I don't remember that we have.

THE COURT. Q. I think the question of Mr. Waters is not particularly after the rental of water. He wants to know what the relationship between the 2 corporations is, and as to whether or not that relationship, assuming there is one, is defined by writing. If there are such writings he wants to see such writings.

A. I will be glad to look into the records and see what I can find in that particular.

MR. WATERS. Q. Please produce it at the next sitting, whatever the documents may be whether resolutions, leases, agreements, deeds of conveyance made between them, or what not: just bring them, simply bring them.

A. Do you want the original or copies?

Q. Oh, whichever you have, whether you have originals or copies bring them.

MR. BRITT. Q. How long have you been the general manager of the Ontario Power Company?

A. Since May, 1902.

Q. How long have you been the president of the San Antonio Water Company?

A. Since November,,1896.

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Q. Do you know about the time of the organization of that Ontario Power Company? Was that a company of which I. N. Moor and Beck, and Davis were directors?

A. Yes, sir.

Q. Well, that was about the end of 1901, wasn't it?

A. I think it was; I can't tell from memory.

THE COURT. Q. I want to ask you, Mr. Leeke, if this Ontario Power Company was the result of the suggestion, of which we all know something, at the time the company issued its bonds and made an adjustment with the Electric Power people--and which involved the operation of the electric line?

A. Yes, sir.

Q. This was the corporation formed at that time to take over the power and electric end of the matter?

A. This corporation was formed by Los Angeles men, evidently with the intention of exploiting the electric power in the canyon and also the water lands that we have been discussing, and in order to protect ourselves, our own water rights and other rights, we simply made a deal by which we came into possession of the stock of the company.

MR. BRITT. Q. In regard to the water flowing in the San Antonio Canyon, you have noticed I supposed the volume of water there this season, just ceased, 1906-07?

A. Yes, sir.

Q. The volume of water has been as great as you ever knew it before?

A. The volume varies so much that it is a pretty difficult question to answer. The largest volume of water I ever knew in the creek I think occurred something like '89 or '90.

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Q. Well, that was an occasion of a single storm, was it, a single great storm?
A. Oh, the wet season.
Q. That was the season of '89 -'90, of extraordinary freshet, was it not?
A. It was, if I have the dates correctly.
Q. I think you are right; the dates are correct. Take the ordinary flow of the canyon for the winter season, and it has been for the last three seasons quite flush has it not?
A. For the last two, and not so much so the previous one.
Q. Wasn't the year of '1904 - '05, a season of rather more than average flow?
A. Yes, sir I think it was more.
Q. You stated in answer to a question, or in an explanation rather, I think, which you made to Judge Chapman, that the bulkhead which has been placed in this tunnel, the Eady tunnel, has caused the water to rise materially: When was that bulkhead placed in the tunnel?
A. This past winter.
Q. About what time during the season?
A. I have not my data with me; but I think it was completed early in February.
THE COURT, Q. Is that a permanent bulkhead?
A. A permanent bulkhead; yes, sir.
MR BRITT, Q. At what point was that placed in the tunnel, how far from the mouth, about?
A. I think about 1500 feet from the mouth.
Q. How far below the well No. 9 at the head of the tunnel?
A. I should judge a couple of thousand feet.

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Q. What is th total length of that tunnel now?
A. Well, I can't give it; I suppose it was something over three thousand.
Q. Isn't the exact length of it common knowledge among the officers of the company?
A. Well, it is not with me; I may have noted the exact length of it at times, but I don't keep those things in my memory.
Q. You understand it to be something over 3000 feet?
A. I think so.
Q. Of what was the bulkhead constructed? Cement?
A. Cement and rock and gravel; principally concrete.
Q. That was just a plugging up of the tunnel at that point was it?
A. It was a very substantial bulkhead.
Q. There is a pipe line I suppose through it?
A. Yes, sir.
Q. What is the size of the pipe line through the bulkhead?
A. I think there are two pipe lines through it; one 12 and the other 10 if I remember rightly.
Q. 12 and 10 inches in diameter?
A. Yes, sir.
Q. They are provided with gates I suppose?
A. Yes, sir.
Q. And the effect of the whole apparatus when those gates are closed is to dam back the water in the tunnel entirely is it, prevent it from flowing to the lower reaches of the tunnel?
A. There is some seepage through but not very much.
Q. The seepage would be I suppose around the bulkhead?

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A. Well, I have no means of knowing how the seepage gets through; it is all enclosed.

Q. Do you know about what the amount of seepage is by measurement?

A. I do not.

THE COURT, Q. Does this bulkhead cover the entire cross-section of the tunnel?

A. Yes, sir; with the wings at the side.

MR. BRITT, Q. Is that bulkhead situated in the tunnel, where the material around in the tunnel is virtually impervious to water, clayey material?

A. Yes, sir.

Q. The location was selected for that purpose wasn't it?

A. Yes, sir.

Q. What was the purpose and object of building the bulkhead?

A. To conserve the water during the winter perior, during the period of rainfall.

Q. Conserve it where?

A. In the saturated mass above.

Q. Drained by the tunnel and the wells?

A. Yes, sir.

Q. How many wells are there which flow into the tunnel above that bulkhead?

A. I only know that there are several wells; I don't know how many; I know there are several.

Q. Well, No. 9 is the principal one is it?

A. Well, I can't say that it is; the Cucamonga Water Company has some very fine wells, had some very fine wells on their 90 acre tract, between the bulkhead and the land of the

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Ontario Power Company.

Q. Are the wells which you mentioned of the Cucamonga Water Company above or below the bulkhead?

A. Above.

Q. Are there any wells which open into the tunnel, flow into the tunnel, below the bulkhead?

A. No, sir.

Q. Do you know to what extent the water raised in that well No. 9, at the head of the tunnel, after the bulkhead was built last winter?

A. No, sir.

Q. Have you no measurements at the office of the company showing the raise of water of that well or others, after the bulkhead was constructed?

A. No, sir.

Q. Has there been a report made to you or any officer of the company as to the effect of the bulkhead in raising the water?

A. Mr. Trask has verbally stated to me that the water was rising, but I have no figures in the matter.

Q. Were there any measurements made to your knowledge to ascertain how the water raised in those wells after the bulkhead was inserted?

A. Yes, sir; I know that measurements have been made by our engineer.

Q. Who kept the record of the measurements?

A. Mr. Trask.

Q. He has them has he?

A. I presume so.

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Q. Have they been reported yto your office, the office of the company?
A. No, sir.
Q. Do you know whether the pipes through the bulkhead were closed, as soon as the bulkhead was constructed and the pipes placed in position?
A. They were closed as soon as the concrete had sufficiently solidified in our opinion.
Q. Are you able to recall the date when the pipes were closed?
A. No, sir; I can't from memory.
Q. Do those pipes, or either of them, that you mentioned, through the bulkhead, go on down throu h the tunnel to the mouth?
A. No, they only extend a short distance below the bulkhead; they are practically part of the bulkhead.
Q. Is there any pipe extending from the bulkhead down to the mouth of the tunnel, lying in the tunnel?
A. The tunnel itself is piped almost its entire length.
Q. A cement pipe?
A. Yes, sir.
Q. Do you know whether the tunnel receives any water by seepage below the bulkhead?
A. No, I do not.
Q. Does your company, the San Antonio Water Company, own the distributing system, within the Ontario Colony, through which this water is distributed to the consumers?
A. Yes, sir.
Q. Has the Ontario Power Company any distributing system of its own?

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A. It distributes some water, domestic water to consumers,- no irrigating water.

Q. Through what connection is that water for domestic purposes made by the Ontario Power Company, with the main pipes which you described here earlier?

A. Simply an iron pipe, usually an inch or three-quarter inch pipe running to a sand-box, so that isolated parties, isolated residents, may obtain domestic water.

Q. About how much water is distributed in that manner by the Ontario Power Company?

A. It varies with the seasons; in a season of normal water supply, I presume there would be 60 or 80 inches.

Q. Where does that water come from that is distributed in that manner by the Ontario Power Company? From the Eady Tunnel or from the San Antonio Canyon?

A. Part of it comes from the San Antonio Canyon, and part of it from the Eady tunnel.

Q. Is that the part of the water which is leased or rented by the Ontario Power Company to the San Antonio Water Company?

A. No; the water which is diverted for domestic purposes is not included in the leased water.

THE COURT, Q. Do you mean that the Ontario Power Company has the sole charge of the water that is used for domestic use?

A. Not in the towns; but outside of regular domestic systems, we allow our people to connect a small pipe, an inch or three quarter inch pipe, to the sand box, and obtain water for domestic use.

Q. That is under their holding of stock in the San Antonio Water Company, is it not?

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A. No, we turn out for irrigating purposes, ordinarily, their entire amount of water, as indicated by their stock, and furnish them domestic water through these subsidiary pipe lines.

Q. But do they attach that to the system of the San Antonio Water Company?

A. Yes, sir; that is true.

Q. I don't quite understand how the Ontario Power Company comes in there?

A. The Ontario Power Company turns a certain amount of water into the system of the San Antonio Water Company; the San Antonio Water Company pay a rental on all water that is not used by the Power Company in furnishing these isolated farm houses with water.

Q. How in the world can you tell how much they are using, if you have sand-boxes all over that way?

A. In a year of much rain-fall we estimate it, and in a year when water is scarce we put on meters, and measure it to them, and charge them absolutely so much an inch.

MR. BRITT, Q. You charge it by the inch do you?

A. Inch - or cubic foot.

Q. By the tousand gallons?

A. Yes, sir.

THE COURT, Q. There is a constent running account of water between the two companies, the Ontario Power Company and the San Antonio Water Company?

A. Yes, sir; that is true.

MR. BRITT, Q. Then, as I understand this sale of water made for domestic purposes, in the manner that you have mentioned

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is not to stockholders of the San Antonio Water Company, but to persons who are non-stockholders and that pay money for it?
A. It is to stockholders in the San Antonio Water Company.
THE COURT, Q. But independent of their holding of stock?
A. That is correct; yes, sir.
MR. PRITT, Q. Is it supplied to anybody else, other than the owners of stock in the San Antonio Water Company?
A. There may be a few instances; not generally.
Q. How long has that arrangement been going on for the supply of domestic water in this manner, through service pipes of the Ontario Power Company?
A. I think about four years or nearly that.
Q. Now, you mentioned that this arrangement was in force during the years when the water supply is normal: Do you mean that that is throughout the year, that this domestic supply goes on through those pipes in years when the flow of water or quantity of water available is normal, from the First of January to the 31st of December?
A. Yes, sir; continuously.
Q. Well, then, suppose that the water supply should diminish, until it is not what you call normal, what becomes of those people who are getting domestic water in that way?
A. The idea I had in my mind was that we restrict them in that case to the measurement by meters, meter measurement of water.
Q. Well, then, they are supplied at all times?
A. Yes, sir; that is right.
Q. Sometimes when the water supply is abundant they get more

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water than they do at other times, but they get water or water is sold to them at all times, whether it is normal or abnormal?

A. That is right.

THE COURT, Q. Is there any other agency there in Upland or Ontario, or the Colony generally, through which persons can obtain domestic water, other than the two companies, the San Antonio Water Company and the Ontario Power Company?

A. All except a domestic company that supplies the South Side tract with water, South of the Santa Fe, and South of the Southern Pacific Railroad,- and also what is called the Stowell tract, south of the Santa Fe.

Q. That is comparatively a small proportion of the Colony?

A. Yes, sir; a very small portion; that is supplied with water from Cucamonga, the Pacific Light and Power Company.

Q. As I infer, the Power Company would supply domestic water to anybody in the Colony, who wanted water, outside of the municipalities, if they offered to pay the rates, irrespective of whether they are stockholders or not, or have they ever refused?

A. They refuse to enter into competition with the ordinary domestic service, that is the service of Ontario and Upland, as towns, but other parties, living on isolated places, we furnish them water. Ofcourse while it is our ordinary rule that this water is supplied to the stockholder, sometimes a stockholder has a tenant upon his ranch, and in that case he receives the water the same as the stockholder.

The same company that I mentioned as supplying the South Side tract, supplies the Stowell tract south of the Santa Fe,

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a small community there, and also that part of Ontario situated south of the Southern Pacific.

MR. BRETT, Q. What company is that?

A. The Pacific Light and Power Company; I presume that is the company that furnishes the water; the water is handled by their agent in that town.

Q. Does that concern derive any water from your companies?

A. No, sir; I understand it comes from Cucamonga.

Q. Is this arrangement which you have mentioned about the supply of domestic water through service pipes of the Ontario Power Company evidenced by or embodied in written agreements, which Mr. Waters asked you about a while ago? Is there any contract between the two companies on that subject?

A. I think there is a contract that bears on that subject; I think so.

Q. You will produce that contract relative to the supply of that water, if you please.

What is the extent of the Ontario Colony Lands, and the Ontario Colony, in which you say this water is distributed?

A. About six thousand acres; of that six thousand, probably about five thousand in cultivation.

Q. Does that include the two municipalities of Ontario and Upland?

A. Yes, sir.

THE COURT, Q. It does not take in all of the lands included in the municipalities? There are some other lands than those known as Colony Lands?

A. Ontario and Upland - I think Upland takes in some lands

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that were not originally Colony Lands.
Q. Are there not some in the south part of Ontario that are not in the Colony Lands?
A. That is true; south of the Southern Pacific Railway; I don't know to what extent.
MR. BRITT, Q. Is there any part of the ,- what you call the Ontario Colony Lands, which are not embraced in those two towns, the corporate limits of those two towns?
A. I think there are colony lands on the north portion of the Colony, San Antonio Heights, lands that are not included in the corporation of Upland.
MR. CHAPMAN, Q. Before you built that flume you got the consent of the Cucamonga Water Company did you not?
A. Yes, sir.
Q. When this Ontario Power Company was first projected, did your San Antonio Water Company have anything to do with it?
A. No, sir.
Q. It was after you - It was after they had begun operations in there, that you began to become apprehensive that it might, in carrying out that enterprise, in some way or other interfere with you?
A. We were very much afraid of our water supply.
Q. In fact, you had some trouble with them did you?
A. Yes, sir; we had some difficulty with them.
Q. And your company then purchased the majority of the stock of that corporation?
A. Yes, sir; that is true.
Q. And expended a vast amount of money in it: Do you know about how much?

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A. We assumed $480,000 of the bonds of that company.
Q. Issued by that company?
A. Issued by that Company. And received $100,000, making the cost $380,000.
Q. Now, of the 5000 acres that you say are actually in cultivation in these Ontario Colony Lands, what are they principally planted to?
A. Oranges and lemons.
Q. And you say they raise vegetables there, too, requiring water in the winter season?
A. Yes, sir.
Q. Now returning to that bulkhead,- the object of your building it, was to prevent the water running out of that tunnel, excepting when you wanted it, wasn't it?
A. That is true.
Q. About how many inhabitants are there in Ontario, supplied with water for domestic purposes?
A. The entire Colony?
Q. Yes, sir?
A. I presume pretty close to four thousand.
Q. About how many are there that are supplied with water for domestic uses by these other people that you speak of, with water that comes from Cucamonga?
A. A few hundred only.
Q. About how many hundred?
A. Well, I don't know the population of the South Side tract; I know very little about it; I know there are not very many people down there.
Q. Comparatively a small number?

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A. Yes, sir.
Q. And you included Uplands, as well as the Town of Ontario in your estimate of the population?
A. Yes, sir.
Q. You spoke some time ago a out the time when that large pipe was laid, the large pipe from the Eady Tunnel: What year do you say that was laid?
A. In the Summer of 1902.
Q. Are you sure of that?
A. Well, there are two pipes there; I am referring to the pipe,- the Ontario Power Company's pipe.
Q. Has the San Antonio Water Company got a separate pipe there
A. Yes, sir.
Q. When was that laid?
A. That was laid about just after we purchased the 1.0 inches of water,- I think that was in 1899,- from Mr. Stowell.
Q. Which was the larger of the two pipes?
A. The Ontario Power Company's pipe.
MR. WATERS: I would like to ask the witness, in response to the inquiries of Mr. Chapman, a question or two: This amount of assets or capitalization of the Company, the Ontario Power Company, which you say you people took over, by the assumption of several hundred thousand dollars obligation,- that investment, whatever it was, by the Power Company, was located in what neighborhood,- in the San Antonio Canyon side, or Cucamonga side?
A. The principal values were located on the Cucamonga side.
Q. By the Power Company, prior to the time when your company took it over?

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A. Yes, sir. The larger values; some values in San Antonio Canyon.

Q. That company had begun operating on the Cucamonga side, before you begun operating there at all?

A. Yes, sir. They begun there.

Q. Had they a pipe line toward Ontario?

A. They had laid no pipe line to Ontario.

Q. What had they over on the Cucamonga side, prior to the time that the San Antonio Water Company bought their assets or stock, what had they on the Cucamonga side?

A. They had the tract of land immediately north of the 90 acre tract, and the tunnel running under the tract of land north of the 90 acre tract, and wells; it all went into the deal; I don't know how the other parties fixed it; I know it all went into the deal with us, several hundred acres there.

Q. Do you mean to say that was the Ontario Power Company?

A. Well, I mean to say that we obtained that in our deal with the Ontario Power Company; what their title deeds were at that time I can't say.

Q. What I am asking you is, in response to what you said to Mr. Chapman, that you people regarded the operations of the Ontario Power Company, as being a kind of a menace to your interest?

A. That is true.

Q. Was it what they were doing over at Cucamonga that was a menace to your interest, or what they were doing about the San Antonio Canyon?

A. We considered the greater menace what they were doing in the lands north of the 90 acre tract, or what they were

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in the lands north of the 90 acre tract, or what they were purporting to do; that was the part of the deal we were afraid of more particularly.

Q. Was that part relative to the Cucamonga side?

A. Yes, sir.

Q. Not what they were doing up in the San Antonio Canyon?

A. Well, that was a part of the controversy, but we considered the water part connected with this tunnel and wells the most serious part of the difficulty.

THE COURT, Q. Just what was the plan and purpose of the work of the Ontario Power Company, prior to the time when you made this adjustment with them?

A. As we understood it, the Ontario Power Company had acquired either possession or title, or both, to these lands immediately north of the 90 acre tract, and it was a matter of common information I think at that time, that they were intending to develop very largely there, and to draw the water from that section, to our detriment; it was even intimated that they were about to run a tunnel up as far as the Base Line, and drain our 16th Street wells.

MR. STEVENS, Q. What time was this, what year?

A. This was in the Winter of 1902. What actual title they had I don't know; what they actually intended I don't know, but it made the impression our minds that it was a very serious matter; so we at once began negotiations, and finally succeeded in taking over those lands.

THE COURT, Q. Do you mean to say they had not done very much in the way of actual development or work?

A. The difficulty in answering that is I don't know espec-

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ially who was doing it.
Q. Were they supposed to be an agency of the Pacific Light and Power Company?
A. Yes, sir.
Q. The name would seem to indicate primarily a power company: Had they done anything in the way of development of power?
A. I don't think they had, except to obstruct us in our development of power, or attempt to.
Q. Mr. Waters and Judge Britt, have asked you for contracts and writings showing the relation between the San Antonio Water Company, and the Ontario Power Company: Were there any of those writings which also extended to the Pacific Light and Power Company in the matter of adjustment?
A. Yes, sir; we have a general contract that covers the relations.
Q. Of all three corporations?
A. Yes, sir; so far as the relation of this deal is concerned. I presume that is what Mr. Waters desires.
MR. WATERS: I can assure that I didn't know what, but I supposed that in transactions of the magnitude that you evidently had, that possibly somebody had written or signed something, had some written memorandum at least, of it, and that it did not all rest in your memory.
MR. BRITT, Q. As long as your attention has been fixed on the question of stock and taking it over, - you stated that the San Antonio Water Company has all the stock of the Ontario Power Company, except 20 shares?
A. Yes, sir.

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Q. I inquire of you, if your holding is not the remainder of five thousand shares, and if that is not the total capitalization?

A. We hold all the issued stock of the company.

Q. Is it all issued, Mr. Leake?

A. No, I think not; I don't remember just now the exact number of shares that is carried on our books.

Q. Would it refresh your recollection if you saw the articles of incorporation. I suppose you have a copy of the articles of incorporation?

A. Yes, sir; it would.

Q. What source of water supply in the City of Ontario, and in the City of Upland is there, besides these two companies which you have mentioned, north of the Railroad? Any?

A. North of the Southern Pacific Railroad?

Q. Yes, sir?

A. I am of the opinion that the Pacific Light and Power Company furnish water to the Stowell Tract, between the two railways, immediately south of the Santa Fe,- to a few families there,- not many.

Q. Between the Southern Pacific and the Santa Fe?

A. Yes, sir; immediately south of the Santa Fe.

Q. Is that a large tract?

A. It is a tract of - it is not a large tract; I don't know how many acres it contains; there are not more than a dozen or two houses on it.

Q. All of these other people now in Ontario, and Upland, are not stockholders in the San Antonio Water Company, are they?

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A. The Town of Ontario is a stockholder to the extent of the water that it uses as domestic water, and I think they own about 200 shares, and we turn the water over to them to the amount of their pro rata, as we do to the other stockholders.

. How about the town of Upland?

A. The Town of Upland is principally furnished water by a city corporation, a corporation that owns a large block of shares in the San Antonio Water Company.

C. A private corporation?

A. Yes, sir. We turn their pro rata of water over to them as we do to the other stockholders.

THE COURT, C. What is the name of that company?

A. I think it is the Citizens' Water Company.

MR. BRITT, C. It is a consumer of the San Antonio Water Company?

A. The Citizens' Water Company is; yes, sir.

Q. Not a consumer of the Ontario Power Company?

A. No, sir.

THE COURT, Q. When you say a consumer, do they take water by buying it from the San Antonio Water Company, or simply by virtue of holding stock in the San Antonio Water Company?

A. Simply by holding stock.

MR. WATERS, Q. They buy it don't they by paying the rate?

A. No, sir; the San Antonio Water Company collects no rates; we simply turn over to our stockholders, such water as is applicable to their shares of stock.

Q. How do you get your money?

A. We levy an assessment on the stock of the corporation.

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MR. BRITT. Q. You raise money in that way to pay interest on your bonds?
A. Yes, sir.
Q. How much bonded debt do you carry?
A. We have now $350,000; I can't give it exactly.
Q. What is your annual interest charge?
A. There are something over 300 bonds,- [illegible],000, we pay six percent.
Q. How about the balance?
A. We have some five percents out; I don't know how many; ten or twenty of five percent.
Q. Look at this paper which is furnished here by the Clerk of this Court, from his records, and state if you recognize that as a copy of the articles of incorporation of the Ontario Power Company, and a statement of its capitalization?
A. I think that is correct.
Q. That fixes the capitalization at 5000 shares?
A. Yes, sir.
Q. How much a share?
A. One hundred dollars.
MR. BRITT: It shows that there were 50 shares criminally subscribed.
MR. CHAPMAN: I still don't see how that shows how much is issued now.
MR. BRITT: I understood the witness to say it was all issued.
A. Well, I am not sure of that.
MR. CHAPMAN, Q. You can find out can't you?
A. Yes, sir.

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MR. BRITT, Q. Are these five directors of the Ontario Power Company, who owned five shares each, also stockholders in the San Antonio Water Company?

A. Some of them are; part of them.

Q. Were they given the shares which they hold by the San Antonio Water Company, in order to qualify them to act as directors?

A. Yes, sir.

THE COURT, Q. You answered me at two different times, somewhat inconsistently, as I understood you some time ago, I understood you to answer to one of my questions that by reason of the differences there in the Colony this Ontario Power Company was organized as a result of the adjustment of those differences; then I understood you to say that this Power Company had been at work doing certain things which you thought were inimical to the San Antonio Water Company, and you took over a portion of their stock to protect yourself. Was the difference between the San Antonio Water Company, and the Pacific Light and Power Company in the first instance, and this other corporation, the Ontario Power Company organized in the adjustment of those matters, or was it otherwise?

A. As I understood it the Ontario Power Company was originally a sub-company of the Pacific Light and Power Company, and that in adjusting our difficulties with the Pacific Light and Power Company in the Canyon, we were offered the opportunity to take over in the adjustment that company and we did so, not only to subserve our interests in the San Antonio Canyon, but very largely this water question which we were alarmed

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about.

Q. When you stated in answer to my question that the Ontario Power Company was the result of this adjustment that was not strictly accurat , but you took over certain portions of the stock in the adjustment, the corporation having already existed as an agency of the Pacific Light and Power Company?

A. Well; yes, sir. I intended to make it clear.

MR. CHAPMAN: I would like to have it appear in the record that the subscribers of the stock of the Ontario Power Company, organized on the 24th of October, 1901, were B. N. Weed, I. N. Moore, E. A. Beck, E. A. Davis, and L.D.C. Gray. The articles were filed in the Clerk's office on the 28th of October, 1901.

MR. BRITT: Now, as to the well reports, reports from the wells, sheets furnished here or produced here by Mr. Leake, in response to a request made by Mr. Waters, they consist largely of entries, which contain the data for computing the flow of water, but which do not show the actual amount of flow, or rather the summarized amount of flow, and in order to obtain from them anything that would enlighten us and the Court as to the quantity of water produced in the several wells, it will be necessary as I understand to make computations; for example, it gives the depth of water over a weir, and the length of time, apparently, that it flowed, and I would like to inquire if it is agreeable to defendant to allow us to take these sheets, for the purpose of making those computations.

THE COURT: Are not the data sufficiently set forth on the face of the report so that a stxranger who knows how can

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make the computations?
MR. BRITT: Mr. Purcell, is there sufficient data on these, so that one who knows how can do it?
MR. PURCELL: Yes, sir; I have seen them.
MR. CHAPMAN: How long will you want them? How long will it take you?
MR. BRITT: I think if the defendant will allow us to take these sheets over night we can determine by tomorrow the length of time that will be required to work up all the data; I think there is some of it that is insufficient, for instance, where it gives nothing but horse power, without any depth of weir, I don't see how that can be worked into anything as to the flow. If they will allow us to take the sheets until tomorrow morning I think we will be able to inform them as to the amount of it which is available for the purpose of information, and they can be segregated out; and if we need further time to work up the computations we will ask the Court for that, and return to them so much of the sheets as are not available.
THE COURT: Is there any objection to that?
MR. CHAPMAN: We know of none.
MR. BRITT, Q. About the use of that tunnel, the Eady tunnel, the Stovell tunnel, you called it frequently, by the Ontario Power Company, had the Ontario Power Company obtained, or rather was it in the use and possession of the tunnel for the conveyance of any water, at the time your company took over this stock?
A. As a part of that deal with the Ontario Power Company, we came into possession of the tunnel, subject to one-half of

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its capacity by - use of one half of its capacity by the Cucamonga Water Company, and the running through it of the 130 inches of the San Antonio Water Company.

Q. You had been in the use of the tunnel for the conveyance of that 130 inches, for some time previously?

A. Yes, sir.

(Answer of witness beginning on line 28, previous page, read)

Q. By "we", you mean the San Antonio Water Company ? Is that correct? (Referring to phrase "We came into possession of the tunnel" etc.)

A. No. Mr. Britt was speaking to me as an Ontario Power Company proposition, as I understood it.

THE COURT: No, I don't think that was it.

A. Then that answer should be corrected.

THE COURT: Better read the question again.

(Question on previous page, beginning on line 2[illegible], read to witness).

MR. BRITT: (Adding to question) By ~~your~~ "your company" I mean the San Antonio Water Company.

A. When our company took over the stock of the Ontario Power Company we took as appurtenant to that system a deed - we took as appurtenant to - that is,- I get the two companies tangled, in this case. I will try that again: When the San Antonio Water Company came into possession of the stock of the Ontario Power Company, the Ontario Power Company controlled the Eady tunnel, with the exception of the use of that tunnel by the Cucamonga Water Company, up to one half of its capacity, and the right of the San Antonio Water Company to conduct through the tunnel 130 inches of water.

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MR. CHAPMAN: I don't think you have expressed that just exactly right yet: As I understand you the Cucamonga Water Company had half of the carrying capacity of the tunnel?
A. That is right, yes; the use of it.
Q. And the San Antonio Water Company had the use of the tunnel for 150 inches?
A. Yes, sir.
Q. Then all over and above that belonged to the Ontario Power Company?
A. That is right.
THE COURT, Q. Now, you started to say that when the San Antonio Water Company took over this system there was a deed as a purtenant in some way: What were you going to say about that?
A. Well, the Ontario Power Company is in possession of a deed conveying that tunnel.
MR. BRITT: From Stowell?
A. From the Cucamonga Fruit Land Company.
THE COURT, Q. And Stowell jointly?
A. Well, I don't think Stowell's name occurs except as a member of the Fruit Land Company.
Q. As I remember, your original contracts were with the Cucamonga Fruit Land Company and Stowell jointly?
A. The original contract for 30 inches of water was with the Fruit Land Company and Stowell jointly; the contract for the 150 inches of water, I am not sure about, whether it was simply the Fruit Land Company, or whether Stowell was a party.
MR. CHAPMAN: The instruments which were executed between

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the parties will show just exactly what it was.

Here the Court takes a recess until tomorrow, May 22nd, 1907, at ten o'clock A.M.

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SUPERIOR COURT.

DEFENDANT.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Company, et al.,

Plaintiff

vs.

San Antonio Water Company,

Defendant

VOLUME VI.

I N D E X .

	Dir.	Cross.	ReDir.	ReCross.
Leeke, W. T.	423	423		
Trask, F. E.	426			
Reed, Frederick H.	434	452		
Rupp, J. H.	458	464	470	
Milliken, D. B.	471	476	481	
Ledig, H. G.	483	487		
Milliken, N. S.	496	503	507	508
Trask, F. E.	511			
Cousins, S. G.	540			

I. BENJAMIN, Official Reporter

May 22nd, 1907. Sixth Day.

W. T. LEEKE.

W. T. LEEKE, a witness previously sworn recalled by plaintiffs, testified as follows:-

DIRECT EXAMINATION.

MR. CHAPMAN. Mr. Leeke made a mistake technically speaking yesterday which I would like to have him correct this morning in regard to the stock of the Ontario Power Company.

Q. I believe you said it was held by the San Antonio Water Compa ny; are you correct in that?

A. No, that was an error , an oversight of mine at the moment; the stock is held by myself in my name.

Q Who is the beneficiary of it?

A. The San Antonio Water Company is the beneficiary. I am the sole trustee for that stock.

Q. And the stock stands on the books of the Company in your name?

A. Yes, sir.

CROSS EXAMINATION.

MR. BRITT. Q. As trustee?

A. As trustee; well, I presume so; it stands in my name. I am the recognized and appointed trustee of the company.

Q. Trustee for the San Antonio Water Company?

A. Yes, sir.

Q. Were you appointed by the San Antonio Water Company to be its trustee in that particular?

A. Yes, sir.

Q. What is the extent of your holding of stock in the San Antonio Water Company?

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A. I hold personally 20 shares and a half interest in 25 shares and a third interest in 10 shares.

Q. How long have you been trustee of the San Antonio Water Company for all that stock of the Ontario Power Company?

A. From the time of the deal made with the Pacific Light and Power Company.

Q. In 1902?

A. In 1902. I think it was in April or the first of May, or near the first of May.

Q. Have you been able to bring this morning those deeds and papers that Mr. Waters spoke about yesterday?

A. I was not relieved until after the trains left; I had no means of getting home last night so I remained in town.

Q. You did not have the opportunity to get them?

A. No.

Q. Have you a map, that is your company, a map or plt showing these several main pipe lines of the system leading from this Sixteenth Street wells and also from north of the Eady tunnel?

A. Yes, sir.

Q. You can produce that conveniently, can you?

A. U It is a cumbersome affair; I can produce it if necessary.

Q. Well, we will ask you to bring that, if you please. That will show the heads of those several pipe lines, the heads of them, and their connection with the lines of the Ontario Colony, will it?

A. Yes, sir.

Q. Do you have on that map or the same map the other con-

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duits of the company leading up to the San Antonio Canyon, the whole system?

A. The whole system I think as far as the division dam, I think is delineated on that map.

Q. As far as what dam?

A. The division dam in the canyon.

Q. Well, that division dam is near the point of diversion in the San Antonio Canyon, is it not?

A. Yes, sir.

Q. Well, please produce that map as soon as you have the opportunity.

A. You made several calls for different articles; I would like a list of them, I can't keep them all in my mind.

Q. Well, we will try to furnish you that at noon today.

MR. CHAPMAN. That map that you speak of, the original map that you speak of, we do not want to file it in evidence here, can't we produce a copy of it?

MR. BRITT. I think we will get a sufficient description from it to obviate placing it in evidence.

A. I wouldn't like to turn the map in here for any length of time, from the fact that our employees are using it daily; it is a very important adjunct to our office in arranging with our people in the division of water, and so forth.

MR. BRITT. I think if we can get it here a single day it would suffice for all necessary purposes.

I believe that is all for the present.

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SUPERIOR COURT.

F. E. TRASK, a witness previously sworn being recalled by plaintiffs, testified as follows:-

MR. BRITT. Q. Calling your attention to the tabulation compiled by you and which has been copied into the reporter's transcript of testimony here, commencing at page 88 and extending thence to page 97 inclusive, purporting to show water elevations, Cucamonga Red Hill, in the various wells, for example the first entry is of the water elevation of well number 3, 1402.9, which I think you stated means feet above sea level.

A. Yes, sir.

Q. I would like to inquire whether those elevations were all taken when the wells were quiescent, that is not pumped, or were they taken without regard to whether they had been pumped recently or not?

A. They were taken on those dates regardless of whether they were pumping or not.

Q. Have you any means of knowing whether when the measurements weremade noted in that tabulation on any particular date the well had been pumped or had not been pumped at the time the measurement was made?

A. Well, there are many dates in here when I know the wells were not pumping, and there are many that I know they were pumping; and there are also many that I don't know whether they werepumping or not, without reference to the record which was turned in here yesterday for your consideration, which record was kept by the mechanics in charge of the pumping station and the pumping plants.

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Q. These sheets here which were delivered to us yesterday for examination purporting to be report from sub-station number 2 to the San Antonio Water Company for the week ending at various dates?

A. Yes, sir. I will say that these sheets were kept at my request and the principal object in keeping them was to make a report of when each pump was started and when it was stopped, and that is a complete record of the operations of each pumping plant and that covered the two pumping seasons of 1904 and 1905 only.

Q. Was there any similar report kept of seasons previous to 1904?

A. I have no knowledge of it as I was not an employee of the company at that time and had nothing to do with the matter in any way or shape. There is one record here in this exhibit on page 92--

Q. You are referring to the reporter's transcript of evidence?

A. Of date October 7th, in which the depths were given at a time when the pumping plant I think was stopped temporarily, all of them. I wouldn't be positive about that. However, these levels represent the pumping level, that is the bottom of the pumping cone and are not strictly the water level of the basin but represent the lowest depth to which the water was pumped right at the pump itself.

Q. Who had charge of the installation of the pumping machinery in those wells?

A. I don't know; employees of the San Antonio Water Company.

Q. It was not done under your direction?

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A. Not at all.

Q. Did you ever examine particularly the pumping machinery in the wells for the purpose of determining the depth to which the pumps had been lowered?

A. I made no specific examination.

Q. Do you know whether the pumps were lowered in the wells from time to time as the waterplane receded?

A. From time to time during the seasons of pumping I noticed that some of the wells-- I could not say now which-- that they were dropping the wells, lowering the pumps, and that they did excavate the shafts in order to do that.

Q. Do you know to what depth in those wells-- I speak now of the wells numbers 1 to 8 inclusive north of Sixteenth street or Base Line-- to what depth the pumps were lowered , the greatest depth at any time?

A. I do not. I made no record at the time of anything except the water level.

Q. Are you acquainted with the locality of the well number 14 on this plaintiffs' Exhibit 1, or well number 9 as has been described in Mr. Leeke's testimony?

A. I am.

Q. Had you any supervisory connection with the boring of that well?

A. None whatever.

Q. Did you have anything to do with connecting the tunnel and the well?

A. None whatever.

Q. Did you take any notes or observations of the pumping of that well at any time ?

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A. None whatever.

Q. Do you know when the pumping was first begun i n that well number 9?

A. I do not.

Q. Did you ever make any measurement of water discharged from that well either by gravity or by means of a pump?

A. Not from that well, no; there is no means of measuring that well. The water that is gathered from that well and others and from the tunnel on the lands lying west and north of the 90 acre tract, those waters all intermingle and flow over only one weir, and are measured only at one point. They are not seggregated in any way or shape.

Q. Do you know where the present bulkhead is put in last winter by the San Antonio Water Company?

A. Yes, sir.

Q. Where is that weir with reference to that bulkhead?

A. Well, it is above it; that bulkhead is on that 90 acre tract; I don't remember exactly the location in feet from the mouth of the tunnel or from the well but the bulkhead is on the 90 acre tract and some distance below the north line of the 90 acre tract; whereas the shaft containing the weir showing the measurements of the runoff from the tract of land lying north and west of the 90 acre tract, that shaft is very near the intersection of the west line of the 90 acre tract by the tunnel and on the lands west of the 90 acre tract.

Q. I suppose since that bulkhead was put in that that weir is submerged-- it is out of commission?

A. I have not been to it but it must be.

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Q. Did you keep a series of measurements of that weir before the bulkhead was put in?

A. Yes, sir.

Q. Have you that accessible?

A. They are over in the hotel, I have not them in court.

Q. You could produce them this afternoon, could you?

A. Yes, sir.

Q. What period of time was covered by those measurements?

A. The greater part of those measurements were made during the years 1904, 1905 and 1906. I think I made a few measurements back in years earlier, some of which were read-- I don't know whether they were all read into the record or not by Mr. Leeke, from my report.

Q. Those are measurements in the tunnel above the present bulkhead?

A. Yes, sir; they weremeasurements made at this shaft weir and intended to measure the flow on to the 90 acre tract.

Q. Well I will ask you to producethose if you please this afternoon. Mr. Trask. Have you any means of knowing what was the elevation in those wells 1 to 8 inclusive before the pumping began in any season.

A. I have the records that are presented here in court in tabulation to which you have referred.

Q. That tabulation I understand however now was made from measurements taken without regard to whether the wells were pumping or not?

A. That is true; but it is made throughout the years represented there; that is from 1904 up to the present time;

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and as the pumping was carried on only a portion of that time it gives the record during the winter season when the wells were not pumping.

Q. Have you any records showing the times when in those several seasons, beginning we will say in 1900, when the Haskell well was first pumped on a considerable scale, the times when the pumping began in that season and the years following.

A. The only record that I would have would be the record which so far as I have it I think has been put in. That is a record of the pumped water from such wells of course and the dates that I have such record when those wells were pumping. I was not there constantly it was only an occasional visit and I made no effort to keep any record of the days when the wells were pumping or when they were not pumping. I simply reported on such days as I made trips there, what I found.

Q. When did you begin to make those periodical or occasional visits to those wells for the purpose of recording the flow to the San Antonio Water Company? Now Mr. Leeke introduced a record here showing a number of your observations and measurements made in 1900: is that the first year?

A. Well, those records, I would have to refer to them to tell the dates, but I can say this: that I made measurements of those wels occasionally, measurements at or about the time the McPherson suit was brought against the San Antonio Water Company. That was the occasion of my making the trips and those measurements. It was some time during the year '99 as I remember it and the measurements read in evidence by Mr. Leeke were the reports made during that year and the year

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1900 up to October 9th when I ceased to do any work for the Company.

Q. A number of those wells had not been sunk at that time?

A. That is quite true, yes, sir.

Q. And the Haskell well had not been then deepened?

A. I think the Haskell well in this record known as number 7, I think the deepening process was begun in 1900-- no in 1899; and I am not sure whether it was completed in 1899 or not. I know the first large measurement which I made there, my recollection is it was made some time in February; but but I have no record by which I can give you the date when that pump was first installed or when it first pumpedfrom the lower level. I do know the deepening process was begun in a previous year, 1899.

Q. Now, in the years 1901, 1902 and 1903 were you making any measurements of the output of water from those wells?

A. My recollection is that I have one and possibly two measurements made in 1903, but I wouldn't be positive about that. If I made those measurements I have the record at the hotel; my notes of it.

Q. Well, will you letus havethem this afternoon if you can find it. Have you any measurements at all of that well number 9 mentioned by Mr. Leeke, well number 14 on the plaintiffs' Exhibit 1 other than such as were made at that weir above the bulkhead in the tunnel?

A. I have no measurements excepting what I have put in record in the transcript, the reporter's transcript covering that well number 9, and designated in that tabulation, showing I believe the depth of tunnel of shaft number 9 and

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also the depth of water level subsequent to the closing of the bulkhead.

Q. Looking at that particular tabulation which seems to begin at page 82--

A. No.

Q. You refer to the othertabulation which shows elevation of water in wells?

A. Yes, sir. It was o f no water measurements other than the elvation.

Q. Oh, it was just elevation?

A. Yes, sir.

Q. Those appear in the last column on page 97 of the reporter's transcript?

A. Yes, sir; you have there such data as I have.

MR. HASKELL. Q. Were these pumps placed above or below the water level i- the first instance?

A. I have never been down to those pumps in the shafts. I did not give any attention to the details of installation at all.

THE COURT Q. They must have been below the water level or they couldn't pump?

A. They had a suction pipe down to the water.

MR. HASKELL. Q. I had reference to the pump itself.

A. That is what I inferred from your question; the probability is that the pump is just above the water.

MR. HASKELL. Q. What would be the suction limit?

A The theoretical limit would be 34 or 35 feet. The practical limit would probably be 18 to 24 feet as a maximum.

Q. So if the pump was placed at the actual water level it

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would :pump it 24 feet below?

A. Our practice is for economy to keep that at 18 feet. We do not aim to get over that owing to the suction of air.

THE COURT. Q. That is about the practical limit?

A. That is the limit economically but as a matter of fact we actually pump more than that but not with economy.

MR. HASKELL. Q. Your pumps were centrifugal pumps?

A. Yes, sir.

--o--

FREDERICK H. REED.

FREDERICK H. REED, a witness called by plaintiffs being first duly sworn, testified as follows:-

DIRECT EXAMINATION.

MR. BRITT. Q. What is your name?

A. Frederick H. Reed.

Q. Where do you reside now?

A. At present in San Diego.

Q. What is your profession?

A. Engineer and surveyor.

Q. How long have you followed that business?

A. Nearly 33 years.

Q. In 1904 and 1905 and the early part of 1906 where were you living?

A. In Los Angeles and my family were living in Claremont.

Q. Do you know the locality called the Cucamonga Springs and the neighborhood in the western part of San Bernardino County?

A. Yes, sir.

Q. Did you make any measurements of water in wells and

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tunnels and other places there in the year 1904 and 1905 and 1906?

A. Yes, sir.

Q. What were you measuring there?

A. I was measuring the weirs and wells of the San Antonio Company as I was admitted to them, and of the Cucamonga Vineyard Company's property; I made measurements in conjunction with Mr. Sanders or with other engineers at different time or alone.

Q. Did you keep a record of the measurements you made at the different weirs?

A. Yes, sir.

Q. How did you designate your weirs? By numbers?

A. By numbers.

Q. Where is your weir number 1 situated?

A. Weir number one was situated at the mouth of the tunnel in the lower end of the tract?

Q. What tract?

A. The 35 acre tract, I think it is called; it is down near the county road. It is some months since I have been there now. I don't remember clearly about the names of the tracts. [redacted].

Q. Could you locate those on that map, those weirs?

A. Yes, sir

Q. Come here please and I will call your attention to this map, plaintiffs' Exhibit 1, and I will ask you to show us on this map where your weir number 1 was situated?

A. It would be in here.

Q. Where is that with reference to the mouth of the Eady

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tunnel, you know the long tunnel?
A. Yes, sir.
Q. What did you call it did you know it by any name?
A. I knew it as tunnel number 2.
Q. Well it has been called tunnel number 2 here.
A. That is how I designated it?
Q. Well, tunnel number 2.
A. And that weir number 1 was the southern most box or weir.
Q. That was on the west side of the Red Hill?
A. Yes, sir.
Q. Do you know where the winery is and the ruined brick hotel?
A. Yes, sir; the Mountain View hotel on the east side.
Q. And this tunnel is on the west side?
A. Yes, sir.
Q. And this weir 1 was situated--
A. At the terminal of that tunnel.
Q. At the mouth of it?
A. Yes, sir.
Q. Where was weir number 2?
A. Adjoining it within a short distance, shown here on the map here just northerly on that same line of tunnel and the water from the tunnel came through this on through to weir number 2. And more recently there was a new weir put in here at number 2 and the water diverted from that to number 1.
Q. Those 2 weirs are near the notation on the map, "Gran. " for granite, "Mon." for monument " E. L." for elevation and figures "1277"?

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A. Yes, sir.

Q. At how many different weirs did you take the measurement during those times?

A. 8 of the San Antonio Company's.

Q. Do you mean the San Antonio Water Company?

A. Or the Cucamonga Vineyard Company. There are 8 points. And 7 or 8 wells of the Cucamonga Water Company; as I measured those I noted them by numbers instead of names, not knowing how the company may have designated them themselves I adopted a system of numbering for both systems of weirs and continued that consistently right through the measurements that I took.

Q. Now you have located weirs 1 and 2 near the mouth of the tunnel number 2?

A. Yes, sir.

Q. Where is your weir number 3 located?

A. Of the San Antonio Company?

Q. Of the Cucamonga Vineyard Company. I want to get your weirs, as they appear on this tabulation. Weir number 2, weir number 1 and weir number 3 .

A. Weir number 3 was a well; it would be up in here about in here.

Q. Can you tell by reference to your reports which you brought here?

A. That is the cement shaft of the San Antonio Company. This is the well number 3 that you speak of .

Q. Let me show you this smaller map which has not so many details on it?

A. Yes, sir; I see it; there is weir number 3.

Q. Having the weir number 3 located on that smaller map,

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which has not been offered in evidence, and I show it to you merely for the purpose of refreshing your recollection, can you now identify the location of weir number 3 on this larger map? Compare the two maps and see if they correspond ?

MR. STEVENS. Did you say that weir number 3 was a well?

A. Weir number 3 is a weir.

MR. BRITT. Q. What sort of flow of water did weir number 3 measure if at all?

A. Very small.

Q. From what did it proceed?

A. It proceeded from a well.

Q. Was the well connected with anything else?

A. That flow of water ran on into the tunnel.

Q. Did the water raise to the surface of the ground?

A. It raised to the pipe at the top of the pipe in this shaft which was a matter of 80 feet I should judge below the surface at that point.

Q. Did it flow off into the tunnel?

A. It flowed off into the tunnel at that point.

Q. How was it connected with the tunnel?

A. There was a pipe connection with the tunnel.

Q. What was the distance of that well from the tunnel?

A. I don't know the distance, I never measured it. I should think probably inside of 100 feet.

Q. That was your weir number 3 ?

A. Yes, sir.

Q Measured water from that well?

A. Yes, sir.

Q. What did you designate your next weir as? Number 4?

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A. Yes, sir; 4 and 4 a. They were connected together in the shaft, the bottom of a wooden shaft not far from well number 3 on the northerly line of tunnel number 2.

Q. Were they on what is called the 90 acre tract?

A. I don't remember about the 90 acre tract now. Number 3 was in the 90 acre tract, 3 and 4 and 4 a, within the 90 acre tract shown on this map here.

Q. Do you find the weirs 4 and 4a noted on this exhibit 1?

A. Yes, sir; shown here.

Q. You say shown here and you point to a place?

A. I point where they are noted here, weir 4 and 4a marked at this point.

Q. Near the northwest corner of the 90 acre tract?

A. Near the northwest corner of the 90 acre tract.

Q. What water was measured over those two weirs, what water did you measure over those two weirs?

A. Water that came from the well that was eatsterly from this point.

Q. You mean easterly from what point?

A. Easterly from weir number 4 or 4a to that shaft and the water that came through the tunnel number 2 in passing south, of the San Antonio Water Company.

Q. That was measured at each one of those two weirs. 4 and 4a are very close together.

A. They are in the same chamber, they flow in a common conduit, they are two separate and distinct weirs.

Q. How far apart?

A. They are situated, setting at right angles to each other.

Q. And how close together in inches or feet?

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A. I am trying to recall my memory of the shape of them.
Q. It is not necessary to be exact about it.
A. The chamber is necessarily contracted at that depth.
Q. A cement chamber?
A. Yes, sir.
Q. And at what depth below the surface?
A. About 85 feet.
Q. In the tunnel?
A. It is a shaft down to the tunnel, but the weirs there, the water is brought in so there is no access to the tunnel on the up stream side of either of them and the water flows in a pipe 3 feet in diameter or something like that in tunnel number 2 progressing southward and these weirs set-- there is a box maybe half a dozen feet on the side-- at right angles to each other, t e water flowing into and through one and into the other, and flowing into a box below leading to the tunnel.
Q. The weirs 4 and 4a are both situated in a cement box about 6 feet square?
A. Something like that.
Q. And the weir 4 measured the water or was the means of measuring the water from what source?
A. The water coming through tunnel number 2 from the north and from this well to the eastward, the number 4 well of the Cucamonga Vineyard Company.
Q Of the Cucamonga Water Company?
A. Yes, sir; Cucamonga Water Company.
Q. And the weir 4 a was used to measure water from what source?

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74a I believe from my memory now was the one designated as measuring the water of the San Antonio Water Company.

Q. Well you kept a register of the measurements at those two weirs?

A. Regularly, yes, sir.

Q. And did you have a weir number 5. That is pumped water.

A. That would be the well known as the Lone Star well number 5.

Q. That was weir number 5?

A. Yes, sir.

Q. Can you find it on this smaller map shown you?

A. There is weir number 5.

Q. I would like to have you testify from the larger map plaintiffs' exhibit 1?

A. That is the one there and also spoken of as the Lone Star well or weir.

Q. Is it located on this map plaintiffs' Exhibit 1, marked Lone Star weir in the sandbox?

A. Yes, sir; that is the position of it as shown there.

Q. That is in the upperportion of the map and toward the right hand side is it not?

A. Yes, sir; the northeasterly quarter.

Q. You made measurements of the water there?

A. Yes, sir.

Q. Coming from what source?

A. That was pumped from a point, a well here at number 6 marked here number 6, marked up here number 6, pumping plant there.

Q. You are pointing to plaintiffs' Exhibit 1.

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A. Yes, sir; it is lot 11 on that.

Q. Where the words appear "Well 6 1897, El. 1457-1392"?

A. Yes, sir.

Q. Now did you have a weir number 6?

A. Weir number 6 is at this point here, in this lot or tract.

Q. That is in the lot which has been referred to as the 35 acre tract?

A. This one; yes, sir.

Q. How is it marked on that map, plaintiffs' Exhibit 1?

A. This is the weir where measurements were made of that water.

Q. Is the weir marked here?

A. Weir number 6; the weir is down near the road; Hellman avenue, right alongside of the road.

Q. See if you can find it on the smallermap which is less encumbered with details than the other?

A. Yes, sir; this is it.

Q. Now tell us where it is on the larger map, plaintiffs' exhibit 1?

A. Here is weir number 6.

Q. How is it situated with reference to what is designated as Hellman avenue?

A. It is close to the line of Hellman avenue, on the west side.

Q. How far distant from the indication there of reservoir number 1? Marked about 2 inches to the left , isn't it?

A. yes, sir.

Q. Did you have a weir number 7 in that series of measure-

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ments made by you?

A. Number 7 and 8 were both further down Hellman avenue at this point.

Q. Indicated where on the map plaintiffs' Exhibit 1?

A. This point here.

Q. I see you are pointing by you know that does not indicate anything in the record?

A. It is on the west side of the tract, I don't know how to describe that otherwise.

Q. Where is that located with reference to the words "Sec. 3"?

A. Section 3?

Q. Yes, sir.

A. It is right at that position on the map.

Q. How with reference to Hellman avenue?

A. On the east side of Hellman avenue.

Q. Now water from what source is measured at weir number 6?

A. That water came down through this -- Q. water from the Lone Star tunnel?

A. A. Well, it may have been water from the Lone Star tunnel or from 6; I don't know as to that. I know that water came down through there to this point.

Q. To what point?

A. To this point of the location of the weir number 7.

Q. What water was measured at weir number 7? Water flowing in a ditch or flume or tunnel or pipe?

A. In a pipe.

Q. In a pipe from where?

A. From some point northerly.

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Q. Now there is a weir number 8 situated where?

A. Weir number 8 was contiguous to weir number 7, it was another box that measured the water that came from the spring or from the creek rather near the Mountain View Hotel and it was brought across in a pipe on about the same general level of ground reaching around to this--

Q. Weir number 8 measured the water taken from Cucamonga Creek?

A. Yes, sir.

Q. At a point near the Mountain View Hotel?

A. Yes, sir; that is a portion of that water came through to this point to weir number 8 from this creek. That is 8a, it should have been, 8a and number 7 being together in position.

Q. Having located your weirs I will next ask you to state when your measurements there begun. You may resume your seat if you please?

A. The first measurements were made the latter part of July 1904.

Q. Have you a record here which will show exactly when they begun? Have you those sheets you brought into court here?

A. I believe I can determine that.

Q. Mr. Reed I want your attention here a moment at the map. I will inquire of you whether the weir 8 which you had was not a weir just below the Mountain View Hotel and close to the wash or creek?

A. Yes, sir; that was number 8. I inadvertently called that 8 there. That was called 8a to distinguish it. It

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dealt with the same water but this was called the 8a weir. The number 8 was the one near the Mountain View Hotel .

Q. 8a was close to Hellman avenue?

A. Yes, sir. 8 is also spoken of as the creek division box.

Q. Your weir number 8 was situated a little away from the wash of the Cucamonga Creek?

A. Yes, sir.

Q. And was used to measure the water which came from the creek direct?

A. Yes, sir.

Q. It was the first measurement made of the water of the creek?

A. That is the first measurement so far as I know that Ix had been made at any point through there. It was a 30 inch pipe and brought the water from the creek and that was the first measuring point for it.

Q. When do your measurements begin?

A. The first measurements that I find in this record here is the 8th of August , 1904.

MR. CHAPMAN. Q. Didn't you say the first one was made in July a little while ago?

A. It was my recollection that I undertook the measurements the latter part of July, the last wek in July, that was my impression.

Q. Looking at your memorandum do you think you weremistaken about it, or have you still other measurements there earlier than that?

MR. BRITT. Q. See if you did not begin your measuring on the

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27th of July? Well, we will take the first of August which you have here; you need not pursue the search any further now. The first record you have here is made August the 8th.

A. The first that I observe here?

Q. August 8th, what year?

A. 1904.

Q. Now at that time besides these measurements made for the Cucamonga Water Company, did you make any measurements of the flow of wells of the San Antonio Water Company north of the Base Line?

A. Yes, sir.

Q. Do you know how those wells are designated? Do you know the well called the Haskell well? How did you designate them in your measurements?

A. I designated them by numbers.

Q. Where did you begin to number?

A. I commenced with the weir near the mouth of the tunnel number 2, which is called number 2 weir and so on up through that 90 acre tract to another point on the tunnel near the cement shaft or weir number 3. Then the other weirs were of wells situated on the northerly portion of the Red Hills ground, beginning the numbering with the westerly one.

Q. I think you misunderstood my question, Mr. Reed. I am asking you about the measurements made of the wells of the San Antonio Water Company, the string of wells north of the Base Line; you know where Base Line is , do you?

A. Yes, sir.

Q. Called Sixteenth Street also?

A. Yes.

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Q. Now my question is directed to the measurements made of those wells and how you understood the designation of those wells, whether you knew the Haskell well by that name or by a number, and the Rubio well by that name or by a number, and thence extending on westerly to the westernmost of the string of wells north of t he Base Line?

A. Yes, sir.

Q. I a directing your attention to that. You say you made measurements of the flow of water from those wells at the same time?

A. Yes, sir.

Q. How did you designate those wells?

A. By numbers.

Q. Where was your number 1?

A. Number 1 well was as I stated on the tunnel number 2, the weir in the southern part of the 90 acre tract near the number 1 well-- no, that was number 2. You ask where number 1 was?

Q. I am asking about those wells. Come here to the map again if you please. It is in evidence here that there was a string of wells of the San Antonio Water Company, commencing up there at the eastern most source called the Haskell well and it has been designated here in different ways by different people. And the string of wells runs thence westerly for a distance of some 4000 feet-- maybe something more than 4000 feet-- and I want to know how in your measurements you kept track of those wells?

A. I kept track of them by numbers and I numbered them in this way: the Haskell well socalled was designated as number

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5.

Q. Where did you commence to number on the west or east side?

A. I commenced on the west.

Q That was 1?

A. Yes, sir. 1, 2 , 3, and so forth.

Q. From the west toward the east?

A. Yes, sir.

Q. How many wells were there at the Haskell place, 1 or 2?

A. There was 2 wells I believe at the Haskell place. 1 that was not measured and not being operated.

Q. Did you make measurements of those wells daily or at what intervals of time?

A. Daily measurements.

Q. How many were thereon that line, on that string of wells, that line of wells, if your memoranda will assist you?

A. That would assist me. I don't recall now so many months have passed since I made the measurement. I see here a record of 8 points.

Q Well measurements?

A. Yes, sir.

Q. You made the measurements of the wells at what intervals of time? Every day or every week or what was your practice?

A. I made them every day at some period of the day; then I made them in conjunction with another man by appointment, it was at a regular stipulated time in order to come together for that purpose.

Q. Have those measurements which you then made been tabu-

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lated so as to show the dates and the quantity of water which you found flowing?

A. Yes, sir, all of the measurements that I made, I kept a record of and of the time that the measurements were made, and also computedthe flow from that data and submitted it in tabulated form.

Q. You understand how to measure water and did then?

A. I did then. That is I made the computation of the flow of water with all these measurements that I made, computed it.

Q. How was the water received from those wells over the weirs which you measured? What means did you have of measuring the output from the wells? Over weirs or in some other manner?

A. Over weirs; the water flowing over a weir and the measurement being made with a guage to read as closely as possible to the exact division of that height of water on the weir, the gauge used being a Hook guage, p rmitted the height of water to be read within one or two thousandths of a foot in height correctly.

Q. The wells, the flow from which you measured were being pumped at the times of all these measurements?

A. Yes, sir; there were weirs carrying the water pumped from a lower elevation. Of course there was no water to measure except the time while they were being pumped.

Q. Did you notice what became of the water after it passed through the weir over the weir, where was it conducted to?

A. It was conducted thereon through a pipe underground I couldn't tell where that flow went to.

Q. Were these weirs situated at the surface of the ground

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or below?

A. At the surface of the ground or quite close to it.

Q. You measured the water as it was discharged from the pumps at the wells respectively?

A. These weirs were not situated, all of them, near to the pumping plant; the number 3 was at some considerable distance south on the line of the pipe; number 1 and number 2 were nearer the pumpingplants; and number 5 was near the pumping plant; 6 was the socalled Rubio well, I believe was another point; number 7 was not being pumped I think at any time while I was there according to my recollection now; number 8 I believe my memory now is it was the same as the Haskell well. that was right near the pumping plant.

Q. Number 7 and 8 were right close together were they not?

A. In the near neighborhood but not close together I believe.

Q. Well, I suppose sometimes you found some of the wells werenot being pumped? They werenot all pumped at all times?

A. There were times when some of them werenot pumping; there were times when none of them were pumping.

Q. Where were you staying or living at the time you were making these measurements?

A. At Claremont.

Q. And you wet out every day did you for the purpose of these measurements?

A. Yes, sir.

Q. Now do you know whether this tabulation, exhibit 3 here on the blackboard shows the results of your measurements both of the weirs on the tunnel number 2 and the Lone Star tunnel

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and the San Antonio Water Company's wells?

A. I have examined it to some extent and it seems to show a correspondence with the data that I submitted on this.

Q. Have you examined it sufficiently to be able to say that it shows substantially, with substantial correctness, the measurements which you made at those several weirs during the times covered?

MR. CHAPMAN. What do you mean by substantially?

MR. BRITT. There might be some typographical erros creep in. There may be a 9 for a 6 or something of that sort, now and then, in the decimal column.

MR. CHAPMAN. Well, then it would not be substantially correct would it?

xxA. MR. BRITT. I should think it would be, with a difference possibly of three hundredths of an inch now and then, I should say it was substantially correct. I don't know that there are any errors at all. I am asking the witness about it.

Q. If you desire to take some time for further examination of this before you finally ppass on that question, we will give you the opportunity to do so?

A. I think I should require it. I don't know enough about this to make the assertion that it is exactly a copy of my memoranda.

MR. CHAPMAN. Does that purport to be a tabulation of Mr. Reed's measurements?

MR. BRITT. Yes, sir.

MR. CHAPMAN. Well, then he will have to go and make a xx comparison of the tabulation with his records.

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MR. BRITT. I understand he has made it partly. That tabulation purports to contain the results of his measurements made from the beginning to the termination of the series including nearly 2 years.

CROSS EXAMINATION.

MR. CHAPMAN. Q. Had you any personal interest in these matters at the time you were making the measurements or were you employed by somebody to do it?

A. I was employed.

Q. By whom?

A. I was employed directly by Mr. Gervaise Purcell.

Q. For whom was he working?

A. I understand in the interest of the Cucamonga Water Company.

Q. You were not employed directly by that Company but just working for Mr. Purcell.

A. No, I think I was employed by the Water Company through him.

Q. The Cucamonga Water Company?

A. Yes, sir; or the Vineyard Company; I don't know--

Q. You speak of having made some measurements at a particular time because you were to meet somebody else and act in conjunction with him?

A. Yes, sir.

Q. Did two of you make the measurements together?

A. Yes, sir.

Q. Who was the other party?

A. The other party for most of the measurements was Charles Sanders an engineer.

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Q. Do you remember who else was employed at other times ? And acted with you?

A. For a rather brief period there was a Mr. Clark if I remember the name right accompanied me.

Q. You speak of the weirs in that tunnel number that you refer to as 4 and 4a?

A. Yes, sir.

Q. How far apart were they?

A. They were not apart in the sense of being separated in a large chamber. The whole matter was over the tunnel or at the tunnel led to by a wooden shaft some 85 feet in depth.

Q. What was the object in having the two weirs?

A. One weir measured the water that flowed from the well; the other measured the water that passed that point, of the tunnel water proper.

Q. Now if I understand that correctly one of them measured a part of the water that flowed in the tunnel and the other the whole?

A. No.

Q. Where were those weirs, whereabouts in the tunnel were they located?

A. I find a difficulty in choosing language to describe them; that is whay I hesitating merely; I could make a diagram of the position of the weirs as I remember it.

Q. Did that diagram that you had in your hand a moment ago, will that show you where they were located?

A. Well that showed the position of the shaft and the weirs, but you ask for the relative position of the two weirs within the shaft.

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Q. Yes. Were the two weirs in the shaft?

A. The two weirs were in the bottom of this shaft, separate distinct weirs.

Q. What was the object of measuring that water at all at that place?

A. Well, it gave the opportunity to know how much water was flowing in the tunnel; also what water was coming into this number 4 weir.

Q. ~~What~~ It would show the amount of water coming into the tunnel at that point?

A. At that point.

Q. That was a good ways up in the tunnel wasn't it?

A. Well, that was quite a distance up, almost up to the northern part of the 90 acre tract I think.

Q. Isn't that where the weir that was measuring ~~in~~ the water in the tunnel set about-- the division line between the 90 acre tract and the lands to the north and west of it?

A. I think it is a little south of the division line, of the property line.

Q. A little south,

A. I think so.

Q. How many feet?

A. Well, I am speaking on an impression and not on knowledge. I should think perhaps 100 feet.

Q. Well, I will ask you again what was the object of measuring at that point at all?

A. It was a weir in the tunnel at that point, and being such I was requested to make the measurement at that point as well as others.

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Q. Who requested you?

A. Mr. Purcell directed me to do so and Mr. Wright.

Q. When Mr. Sanders was co-operating with you did he aid and assist you in making the measurements at that point as well as at others?

A. Yes, sir. We endeavored to measured all of the points at which water could be measured over the whole tract.

Q. Do you know whether there was a weir for measuring the water situated at about the division line between the 90 acre tract and the tract to the west of it?

A. I don't know of any except the ones that I measured .

Q. Those were the nearest to the division line that you know of?

A. Yes, sir.

Q. Did they measure, the two of them, where the water was flowing in the tunnel at that point?

A. That is this 4 and 4a.

Q. Yes, sir.

A. That measured all the water at that point I believe that was passing in the tunnel.

Q. When you were measuring that water did you know why you were measuring it?

A. No, I don't know that I knew.

Q. Was there another weir down below the mouth of the tunnel where the Cucamonga Water Company measured the water that it carried away?

A. There was the weirs at the mouth of the tunnel.

Q. You measured the water there did you not?

A. Yes, sir; I measured the water there.

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Q. Do you know where the water went to from that point of measurement?

A. No; I don't know where that went to.

Q. Did you know that any part of the water that came from that tunnel was taken by the San Antonio Water Company and carried off in the direction of Ontario?

A. At the weir known as number 2 I understood there was a divergence there of the water that belongs to the San Antonio Company.

Q. And at about the same place did the Cucamonga Water Company divert the water also?

A. About the same place there was a diverging of the water that I understood belonged to the Cucamonga Water Company.

Q. If I understood you correctly you were not acquainted with the watersystem and what was being done with the water, where it carried?

A. Not definitely.

Q. Well now at the place where the water was diverted by the Cucamonga Water Company and the San Antonio Water Company was there not a weir for the division of the waters there?

A. Yes, sir/

Q. And you measured that also?

A. Yes, sir; I measured all the weirs.

Q. Did you make the measurements to know how much water went to the San Antonio people and how much went to the Cucamonga Water Company?

A. I measured to determine the amount of water flowing over

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each weir and to report it in that way.

Q. Your records will show all those measurements will they?

A. Yes, sir; all those measurements.

Q. Will they show where they were made and what water they measured?

A. They show each particular weir, the time of the measurement and I believe show whether they were made in conjunction with another or whether they were made alone.

Q. When Mr. Sanders assisted you he only assisted in measuring the waters in which the San Antonio Water Company was interested?

A. He measured everything. He measured all of the weirs with me.

Q. When you were measuring the waters which came from the Lone Star did Mr. Sanders assist you?

A Yes, sir.

Q. And at all the pther places of measurements?

A. At all other places, yes, sir.

Q. Have you examined this tabulation that is hanging on that board sufficiently to know whether it contains all of the measurements that you made?

A. I believe that it does.

Q. Are you sure of it? When you make the comparison now for the purpose of testifying again upon that subject I wish you would take the trouble to observe whether all the measurements that you have made are tabulated on that sheet?

A. Yes, sir.

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MR. CHAPMAN. Before you call another witness there is a mistake in the reporter's transcript on page 341, that I would like to have corrected, lines 10 and 11; the answer of the witness is "The San Antonio Water Company have done work of that character", it should have been "have done no work of that character", it is on page 341, lines 10 and 11 at the end of a very long question.

MR. BRITT. That is undoubtedly right, that is the way he testified, the correction may be made.

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J. H. RUPP.

J. H. RUPP, a witness called by plaintiffs, being first duly sworn, testified as follows.

DIRECT EXAMINATION.

MR. WATERS. Q. What is your name?

A. J. H. Rupp.

Q. Where do you live?

A. Cucamonga.

Q. How long have you lived there?

A. About 13 years.

Q. How old are you?

A. 36.

Q. When you first cam to Cucamonga what did you do, in what occupation were you engaged?

A. Working around on the ranches by the day.

Q. When did you first become familiar with the section of country where Cucamonga Springs is situated?

A. Along in the latter part of 1896.

Q. What were you doing up there?

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A. Why, I was plowing over on the Red Hills. We used to water our horses at the upper end of the springs.

Q. Who were you at work with?

A. H. G. Ledding.

Q. Did you know a place at that time called the Rubio place?

A. Yes, sir.

Q. And the Rubio well?

A. Yes, sir.

Q. Where did you water your teams or horses? While you were at work there on the Red Hill?

A. Along about November we begun to plow and worked all winter.

Q. Did you water you team there somewhere?

A. Yes, sir; we watered them at the upper end of the spring.

Q. Did you change your watering place during the time?

A. When Rubio begun to pump-- he was sinking a shaft at that time-- when he was pumping there wasn't any water; when the pump would stop we would have plenty of water to water there.

Q. And you observed that coincidence did you that when he pumped--

A. Yes, sir.

Q. --you would find one condition and when he didn't pump you would find another condition?

A. yes, sir.

Q. Describe what you found to be the case?

A. Well, we always had plenty of water there to water; one

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day he hurt his engine running and Mr. Ledding went down where he was and we had to go down the stream two or three hundred feet , down the wash and found no water there, and after dinner water began to run again; he had shut down his pump about noon; there was water enough there to fill our canteens. And that happened right along; whenever he was pumping there wasn't any water; when he didn't pump there was plenty of water there to water the horses.

Q. Do you mean to say those conditions were so immediate as that those changes were so immediate as you have described?

A. Yes, sir; it didn't take only about 2 or 3 hours or something like that to make a change.

Q. One way or the other?

A. Yes, sir.

Q. How far was it from this place where you noticed this condition, to the Rubio well where they were working and pumping?

A. About a quarter of a mile.

A. And which direction was this place from the Rubio well, east, west, north or south?

A. South.

Q. South from the Rubio well?

A. Yes, sir.

Q. What year was that?

A. I don't know just exactly when the water stopped but we began to plow there in November.

Q. Of what year?

A. 1896.

Q. Where was this place that you were so in the habit of

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watering the horses? Was that south or north of Base Line?
A. South.
Q. Do you know the stream called the Cucamonga Creek, that emerges from the springs, and is made by the Cucamonga Springs?
A. Yes, sir.
Q. Where was this place that you were so watering your horses with relation to the Rubio well and the spr ngs?
A. It is between.
Q. Right in between?
A. Yes, sir.
THE COURT, Q. What was it a spring or a stream?
A. It was a small stream or spring; well, it was the upper end of the Winery Springs, we always called them, or the creek.
MR. WATERS, Q. That upper end of the Winery Spring stream is where you were watering your horses?
A. Yes, sir.
MR. BRITT, Q. Did you say the Winery Springs creek?
A. The stream.
MR. WATERS, Q. Have you observed since the time you were so engaged at work at the place where you have described, have you been over that ground since then?
A. Not in there.
Q. Have you been in that section of the country since then, have you seen it?
A. Why, I saw the lower end of the Springs.
Q. Have you been over that land or about that land, which lies between the Rubio well, and the winery, since the time when you worked there on the red hill, putting in that grain?

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A. No, I have not been through there for quite a while.
Q. You were upon that ground some two weeks ago were you not with a party of men, in a rig of some sort were you not?
A. Yes, sir; we passed up by the Rubio well.
Q. And you drove down did you not to the vineyard or near there?
A. Yes, sir.
Q. How did the appearance of that country, of that section of country, with respect to the existence of springs of water compare to what it was when you saw it in 1896, when you worked up there?
A. Well, there was not near the water there used to be.
Q. With respect to growing timber how did it compare?
A. Mostly all dead.
Q. How long were you at work there putting in that grain, you and Mr. Ledding?
A. I think we finished up sometime in February; I don't remember the date.
Q. You were there from November to February?
A. Yes, sir.
Q. During what portion of the time did you notice this intermittent flowing and not flowing of water at that place, where you watered your horses? During how much of that time did you notice that condition?
A. Why it must have been along sometme in Dec ember, or sometime in January.
Q. I am asking you how long a time during that several months, did you notice that condition? One week or a month or twenty days, or two months?

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A. Well, a couple of months.
THE COURT, Q. To what extent was the Rubio well being pumped during the winter season?
A. He was just sinking his shaft.
Q. Was he pumping?
A. When he was working down there he was pumping. When he wasn't - He was pumping the water away so he could dig.
Q. I was asking you to what extent, whether it was pumped every day or a portion of the day, or once a week or what?
A. Well, it wasn't nothing regular; when anything would break they would stop. It was irregular; there was nothing steady doing.
MR. WATERS, Q. This pumping that was done by Rubio, was it pumping in course of sinking a shaft, or was it pumping otherwise?
A. Sinking a shaft.
Q. Then it was sinking pumping that he was doing, was it?
A. Yes, sir.
Q. Are you sufficiently familiar with the matter of sinking pumping, to know whether it was continuous or intermittent?
A. Yes, sir.
Q. Which is it continuous or intermittent?
A. Well, it is intermittent.
Q. They pumped a while and stopped a while, is that it?
A. Yes, sir.
THE COURT, Q. Do you know where the water went to that was pumped out of the Rubio well there?
A. He was pumping it on his ranch, barley.
Q. Used for irrigating?

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A. He had barley sowed between his trees, and he was running the water in there.

Q. Was it all used there?

A. Well, there wasn't much. He just begun.

Q. There wasn't much water?

A. No.

Q. How much of the water was there in this spring or stream any considerable body of it, where you were accustomed to water?

A. There was only about four or five inches.

Q. Do you mean that when he was using the pump that entirely disappeared?

A. Yes, sir.

Cross Examination.

MR. CHAPMAN, Q. About how deep was this four or five inches of water flowing?

A. How how deep?

Q. How deep was the water?

A. It was coming down over the rock, and spread out there in the wash.

Q. Can you tell me anything about how deep it was? You say there were four or five inches flowing: What was the depth of the channel and what was the width of the water in it?

A. I didn't measure it.

Q. Well, have you any idea how deep it was?

A. Well, about the size of the stream.

Q. A stream when it is flowing has width and depth both hasn't it? Is that so?

A. Yes, sir; if you brought it close together, it would be

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probably an inch wide, and about four deep.
Four wide and an inch deep I mean.
Q. Four inches wide and an inch deep?
A. Yes, sir.
Q. Well, did you water your horses at that stream?
A. Well, we had rock piled in, and dammed it up at first to water the horses.
Q. And made a little pool of it?
A. Yes, sir.
Q. You say it was in December when you first observed that phenomenon: Do you know about how often you did observe it?
A. No; it happened quite a number of times.
Q. Quite a number?
A. Yes, sir.
Q. Do you remember at what time of day that you first took your horses to water there, and there was not sufficient water for them to drink?
A. It was dinner time.
Q. Do you remember about the time of the year?
A. It was about December or January.
Q. And then you worked until February I believe?
A. Yes, sir.
Q. And between the time you first observed it and the time you left there, it happened several times?
A. Quite a number of times.
Q. When did they first commence pumping at this Rubio well, to your knowledge?
A. I don't know.
Q. Do you know when they quit in that season?

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A. No.
Q. Do you know when they finished that shaft?
A. No, sir.
Q. Do you remember what kind of weather it was on the day that you first went to this place, that you fixed, to water your horses, and there was not enough there to water them?
A. Well, it was clear weather; we were working all day.
Q. Was it warm?
A. I don't remember that.
Q. You think the well that was being pumped, or the shaft was about a quarter of a mile from this place, where you watered your horses?
A. About.
Q. Have you any idea in which direction is the slope of the land there, from the well towards this pool, or the other way?
A. From the well toward the pool.
Q. Have you any idea about what the difference of elevation was
A. No.
Q. Can you tell whether it was 10 feet or 150?
A. Yes, sir.
Q. Give us your best estimate of the difference in altitude?
A. It might have been about 75.
Q. Feet?
A. Yes, sir.
Q. The land where the pumping was, was about 75 feet higher than this stream?
A. About.
Q. Where was this little pool that you made with reference

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to the channel of Cucamonga Creek?
A. It was right in the creek.
Q. And when you first went to work there you made this pool by the use of the little rock dam?
A. Yes, sir.
Q. And the water was then about four inches wide and about an inch deep?
A. It was spread out about that; it was taken up in a smaller channel.
Q. When you made this dam for the purpose of making a place for your horses to drink, that spread it out some didn't it?
A. It would fill up.
Q. How high did you make the dam?
A. So as to hold sufficient water,- enough for the horses to drink.
Q. And you couldn't water your horses when you first went there, except by making the little pool by means of the rock pile?
A. Well, they could but it would be slow drinking, though.
Q. Pretty slow?
A. Yes, sir.
Q. Was there as much water running in the stream there as there was a little distance below there?
A. I don't know that.
Q. I understood you to say in your direct examination that when you found the water had failed from your watering place, that you went down the stream and didn't find any more water?
A. Went down further, and found more water down below.
Q. You found more?

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A. Yes, sir.
Q. How far below?
A. About two or three hundred feet; something like that.
Q. Did you find enough to water your horses there?
A. Yes, sir.
Q. Did you make any other pool at that place?
A. No.
Q. Can you tell us more definitely just where, with reference to these Cucamonga Springs, this pool was that you first created?
A. Along about 400 feet south of Base Line.
Q. On which side of the red hill?
A. East side.
Q. Do you know about how much water there was flowing in the stream below this point, about the quanity.
MR. WATERS: At what point?
MR. CHAPMAN: Where you went and watered your horses, when you found none at the place where you had been accustomed to?
A. No, it was kind of swampy and marshy there, and water all around.
Q. When you first went there do you know whether Rubio was then at work upon the shaft?
A. I heard about his well; I never saw it.
Q. Do you know how long they had been at work on that shaft?
A. I do not.
Q. Did you ever see them at work on the shaft?
A. Yes, sir; I did.
Q. When was that?
A. After our water failed I went there several times.

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Q. But you never had seen him at work before that?

A. No, sir; I never knew him.

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Here the Court takes a recess until 2 o'clock P.M.

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Afternoon Session.

RE DIRECT EXAMINATION.

MR. BRITT. Q. Did you testify , Mr. Rupp, whether you knew the depth at that time that you were up there putting in grain at the Red Hill-- that you knew the depth of the Rubio well? How deep Rubio has sunk it?

A. No .

Q. You didn't know?

A. No .

Q. You don't know what depth he was pumping it from when you were at work there?

A. No, I do not.

Q. Where was the well that he pumped from? Where was it with reference to the wash?

A. On the east bank.

Q. East bank of the wash?

A. Yes, sir.

Q. Do you know the well that is called the Rubio well?

A. Yes, sir.

Q. Was that the one that was being pumped at the time you noticed this peculiar movement of the water below?

A. Yes, sir.

THE COURT. Q. I understood you to say that you saw Mr. Rubio pumping the well himself. You know him, did you?

A. Yes, sir. Mr. Rubio was running the whim and the other man was down in the well digging.

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D. B. MILLIKAN.

D. B. MILLIKAN, a witness produced by intervenors being first duly sworn, testified as follows:-

DIRECT EXAMINATION.

BY MR. HASKELL. Q. How old are you?

A. 77.

Q. Where do you reside?

A. Cucamonga.

Q. How long have you resided there?

A. I went there first in 1883?

Q. What year?

A. '83.

Q. Have you continuously resided there ever since?

A. Yes, sir.

Q. Do you know the property commonly called the Matthew Turner property?

A. Yes, sir.

Q. Can you describe by quarter sections that property, or would you know the quarter sections if I would call it?

A. Yes, sir; I thinkso.

Q. Have you had anything to do with that property?

A. Yes, sir.

Q. In what capacity?

A. I have had charge of it several years.

Q. How many years?

A. I don't remembernow.

Q. About how many years?

A. 6 or 7 years.

Q. As the agent of Matthew Turner and the other owners?

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A. Yes, sir.

Q. Is that property the west half of the northeast quarter of section 10, township 1 south, range 7 west, S. B. M., San Bernardino County, California?

A. Yes, sir.

Q. Now, that property which I have described consists of 80 acres , does it, as described in the question?

A. 60 acres of the Turner place.

Q. What portion of that 80 acres do Turner and the others own? What part of the 80?

A. 60-- what part?

Q. How many acres do they own?

A. 60 acres.

Q. What portion of the 80 is this 60 acres? The north or south portion?

A. North.

Q. Turner and his associates then owned the north 60 of the west half of the northeast quarter of section 10, did they?

A. Yes, sir.

Q. Was there anything planted on that property when you first knew it in '83.

A. Yes, sir.

Q. What was it?

A. Walnut trees.

Q. What else?

A. Some vineyard.

Q. How many acres of vineyard?

A. There is between 25 and 30 acres.

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Q. Is that vineyard there now?
A. Yes, sir.
Q. Are the walnut trees there now?
A. No, sir.
Q. What became of the walnut trees?
A. They were dug out.
Q Was that vineyard ever irrigated?
A. Yes, sir.
Q? How old a vineyard was it when you first saw it judging from its appearance?
A. Oh, I think some of it had been planted out 12 years.
Q. Had it been irrigated? Could you tell whether it had been irrigated by the appearance of the land?
A. Always had water.
Q. Had that vineyard been irrigated since 1883? If so, down to what time?
A. Well, I should think 5 or 6 years since we have had any water.
Q. That would bring it down to about 1901?
A. Yes, sir.
Q. Was it irrigated continuously from '83 to 1901?
A. Yes, sir.
Q. From what water?
A. The Cucamonga Springs.
Q. How much water was used upon that place, how many inches in continuous flow measured under a four inch pressure?
A. We used to have 6 heads a month.
Q. And how much was each head?
A. 30 inches.

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Q. Who turned that water on?
A. Some times myself and some times men that worked at the irrigating, and some times the zanjero.
Q. When it came your turn of water you or your employees turned the wateron if it was not turned on by the zanjero?
A Yes, sir.
Q. Through what pipe system was that water conveyed?
A. Through the Cucamonga Springs.
Q. Through the pipe system now controlled by the Cucamonga Water Company?
A. Yes, sir.
Q. There was a Turner gate or box near the Turner property, was there, or at the highest point of the Turner property?
A. We drew the water always from the reser voir to hydrants on the Turner property.
Q. Did you get your full quota of water from '83 dow to 1901?
A. Well, I think so. I never was particular about measuringit. We always had fair heads of water.
Q. Was there any domestic water right connected with the place or used with the place?
A. We always had domestic water .
Q. Have you had any domestic water since 1901.
A. Yes, sir; always had it.
Q. How is that domestic water taken and from what source?
A. There was some understanding between the watercompany and G. G. Rundell who was in charge of the place.
Q. He was in charge of the place before you took charge of it?

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A. Yes, sir; there was some trouble about the pipes. They were not sufficient to carry the amount of water and the company allowed him to use his domestic water.

Q. In addition to the amount of water that you took in heads?

A. Yes, sir.

Q. And you have used that ever since, have you?

A. Yes, sir.

Q. And on this property?

A. Yes, sir.

Q. For what purpose? Watering stock?

A. Watering stock.

Q. Was this water for irrigation purposes as you received it necessary for irrigation of the vineyard?

A. Yes, sir.

Q. And did you apply it to the irrigation of that vineyard?

A. Yes, sir.

Q. Has there been any shortage of water on that place since 1901 for irrigation purposes?

A. We haven't had any at all.

Q. Do you know whether or not there has been a shortage of water in Cucamonga Springs since 1901?

A. I think there has been. I am very sure, that is a fact. That is, I have heard a good deal of complaint.

Q. Has that vineyard produced crops of grapes marketable, each year since 1883?

A. Marketable?

Q? Marketable crops of grapes. Have you produced them on that vineyard or has there been produced by those in charge of

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the property since 1883 marketable crops of grapes?

A. Until the water was shut off.

Q. Has there been any difference in quantity or value of products since 1901 or since the water was shut off or failed to be delivered there from what it was before 1901 when there was water sufficient for irrigation?

A. Well, I should think about a half a crop.

Q. Half of a crop since there has been no water for irrigation?

A. Yes, sir; some of it has failed altogether.

Q. What then would be the difference per acre in the value of the crop each year between when it was irrigated and when it was not irrigated?

A. Between 25 and $30.

THE COURT. Q. Is the entire 60 acres now in vineyard?

A. No, sir; there is 25 to 30 acres.

Q. In vineyards?

A. Yes, sir.

Q.. What is the rest in if anything?

A. No, we have no water. I didn't try to improve it any further than we raised barley on it and hay.

MR. HASKELL. Q. Do you know of your own knowledge which was the first place settled in Cucamonga upon which water was delivered for irrigation purposes?

A. No, sir.

CROSS EXAMINATION.

MR. CHAPMAN. Q. What years did you have charge of the Turner place, Mr. Milliken?

Q. What years did I have charge?

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SUPERIOR COURT.

Q. I understood you to say you had charge of it 6 or 7 years. What time was that?

A. I don't remember. I still have it.

Q. For the last 6 or 7 years?

A. Yes, sir.

Q. Had you had anything to do with it before that time at all?

A. Of course I had-- no, I didn't have a contract.

Q. Did you first know it in 1883?

A. Yes, sir.

Q. And you say it had been irrigated then for about--

A. It had been there then for about 12 years.

A. I couldn't say. It had been in use-- it had been occupied-- I won't say, I can't say.

Q. You own lands of your in that vicinity? Have you some lands of your own in that vicinity?

A. This side of it; about 2 miles this side of it or east of it.

Q. Is that cultivated in vineyard?

A. That is in vineyard.

Q Do you irrigate that?

A. No, sir.

Q. How old is the vineyard?

A. It was plantedout first in '84.

Q. And you never irrigated it?

A. It was never irrigated.

Q. Prior to your taking charge of this Turner tract how far did you live from there?

A. About 2 miles.

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Q. Before you took charge of it did you have anything to do with the irrigation of lands?

A. No, sir.

Q. How frequently were you thereprior to taking charge of it?

A. Oh, I used to see it once in a while; every day or two.

Q. What was the occasion for visiting it so frequently?

A. Relatives or friends.

Q. Did you ever see the quantity of water which was used there measured ?

A. Yes, sir; I have seen it measured.

Q Whereabouts?

A. South of the reservoir.

Q. Where was the reservoir situated?

A. Nearly north of the place.

Q. And how far from the place?

A. I should think it was about four or five hundred yards?

Q. How would it measure?

A. How was the water measured?

Q. Yes, sir.

A. I don't know what you call it. The water came out of a hydrant into a box, and it was measured in the box.

Q. Was it measured over a weir?

A. No.

Q. By what system of measurement was it then?

A. Oh, I forget; I don't remember.

Q. Do you know how much it measured?

A. We used about-- about 30 inches.

Q. How long ago has it been since you have seen it measured?

A. 6 years. 6 or 7 years.

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Q. That was after you took charge of it?
A. Yes, sir.
Q. I was speaking about before you took charge of it, what did you know about it?
A. Oh, I never saw the water measured.
Q Do you know where it came from?
A. It came from Cucamonga Springs.
Q. And the Cucamonga Creek?
A. The Cucamonga Springs-- cienegas.
Q. Do you know where the water is diverted by the Cucamonga Vineyard Company to take its portion of the water?
A. Whereit used to be. I don't know where it is, no.
Q. The water that was used on the turner place came from the same place?
A. Yes, sir.
Q. Do you know how much that vineyard on the Turner place yielded prior to 1901 or prior to the time you took charge of it?
A. No, I do not. I know they have good crops on the vines. I don't know the amount.
Q. You don't know how many tons to the acre?
A. No, sir.
Q. Do you know anything about the proceeds of the crops prior to the time that you took charge of it?
A. No, sir.
Q. You are acquainted with the cultivation of vineyards in that section of the country are you not?
A. Yes, sir/ very well.
Q. Is it customary to irrigate vineyards there?

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A. When they have water.

Q. Do they have water?

A. They used to have it and some have it now.

Q. Who has it now?

A. Some of the settlers there.

THE COURT. Q. Where do they get that water, those that have water now?

A. I am not very much acquainted with the water system there any further than I hear them tell about different wells.

Q. Do you know whether they ~~xxpk~~ get any portion of that water from the Cucamonga Springs.

A. The Cucamonga Springs have dried up and they don't get it. That is the way I understand it. I haven't been over the ground.

MR. CHAPMAN. Q. By whom or from whom did the Turner place get the water? Who controlled the distributing system?

A. The water Company, through the pipes. He had an interest in the pipes from the springs.

Q. Who controlled the waterat the point of diversion?

A. The water Company.

Q. The Cucamonga Water Company?

A Yes.

Q. Can you tell us about where the Cucamonga Springs to which yourefer are situated?

A. Well, I have been back through that range of country and I know there was a Y tunnel that they used to get water out of.

Q. And about how far above the point where the waters had been divided between the Vineyard Company and the other parties, to those springs?

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A. I can't tdl.

Q. It comes from the Y tunnel?

A. Well, there is some used to get water from there. I know that.

Q. Did the Turner place get water from there?

A. They did.

Q. And they get it now from the same reservoir that they always had it.

RE DIRECT EXAMINATION.

MR. HASKELL. Q. Do you know whether or not Mr. Turner and his associates owned any stock in any of the water companies of Cucamonga?

A. They never have.

Q. You say Turner and his associates have an interest in the pipe lines, do you?

A. Yes, sir:,they paid their proportion of putting in the pipe to deliver their water.

Q. And when your turn of water came during these months and years that you knew it or the turn of water of that place came, how and who turned that water on?

A. The zanejro -- at the hydrants on the place we used to turn them ourselves, but it was turned on from the reservoir by the zanjero.

Q. And when it arrived at your gate, how was it?

A. We turned it on at the hydrants. Some times the zanjero and then sometimes the boys that were irrigating-- I have turned it often myself.

Q. If the zanjero failed to turn it on, you went and turned it on yourselves?

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A. Perhaps I might get there a little earlier than he did. He never failed, or I don't know that he did, till they shut down altogether.

Q. You have testified here that you have a vineyard that has never been irrigated. Is there any difference between the quality of vineyard or soil which you now personally own and the quality of the soil in the vineyard owned by Turner and his associates?

A. Yes; there is a great difference.

Q. What is the difference?

A. Ours is a sandy loam-- lighter lands-- and his land is heavy.

Q. Which quality of land is better adaptable to the growing of vineyards without irrigation?

A. I think the light land is better.

MR. BRITT. Q. Where is this Turner vineyard that you speak of with reference to the Cucamonga Vineyard?

A. Right along side of it.

Q. Anything dividing them?

A. Hellman avenue.

Q. What is Hellman avenue? A road running north and south?

A. Yes.

MR. HASKELL. Q. Would it be beneficially to the vineyard which you personally own to have water to irrigate it?

A. Yes, sir.

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H. G. LEDIG.

H. G. LEDIG, a witness produced by plaintiffs having first duly affirmed, testified as follows:

DIRECT EXAMINATION.

MR. WATERS. Q. Please state your name?

A. H. G. Ledig.

Q. Where do you live?

A. Iomosa Postoffice.

Q. How long hav you lived in that neighborhood?

A. 12 years last January.

Q. Do you know that section of cuntry styled the Cucamonga Springs and cienegas?

A. Yes, sir.

Q. When did you first know them-- or that section of country?

A. A little over 11 years ago.

Q. Did you ever have occasion to plow some land near there?

A. Yes, sir.

Q. Do you rememberwhat year that was?

A. 10 years ago, and 11 years ago; those two seasons.

Q. Who worked with you?

A. The first year Mr. Bront and the second year Mr. Rupp.

Q. The witness who was on the stand here?

A. Yes, sir.

Q. Where did you water your horses that year? That Mr. Rupp was with you?

x A. In the creek -- the head springs in the Cucamonga Springs. That is the further north springs.

Q. Did you continue during all the time that you were at work there to water your stock in that spring?

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A. The first year, yes; The second year we didn't. Some days we didn't have no water to water from. That is, in that spring.

Q. State how that happened, and what happened at the same time?

A. Mr. Rubio was digging a well and when he got down to water he would pump the waterout of the shaft while he was lowering the shaft, and during the time of his pumping there would be no water in the creek at all.

Q. Did you notice how long he would be pumping before that water would cease to flow in the place where you watered your horses?

A. Something like an hour or a little over.

Q. Did you notice when he would quit pumping how long it would be before water would commence being at that place again?

A. Inside of an hour and a half there would be some water coming back.

Q. And that was the head waters, or uppermost or most northerly springs of the Cucamonga Springs?

A. Yes, sir.

Q. Did you go over to the Rubio well at that time?

A. I was over there once.

Q. And what did you see about it at that time? Did you see Rubio there?

A. Yes, sir.

Q. You know him, did you?

A. Yes, sir.

Q. Did you notice how deep the well was?

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A. I didn't notice at that time. He was down in the neighborhood of 60 feet when he was pumping.

Q. When he got to pumping he was dow to the neighborhood of 60 feet?

A. Yes, sir.

Q. What kind of power did he use?

A. Gasoline power.

Q. Did he pump it with the same kind of power after he got his shaft down that he did while he was working in the shaft--working it down?

A. as well as I remember, yes.

Q. Did you see him pumpin with a whim?

A. I did not.

Q. Then it was a gasoline engine that he was using at the time you referred to, was it?

A. Yes, sir.

Q. Do you remember what month it was or how long a time it was that you noticed this changing condition of the water there?

A. I can't say to the month, but it was in the spring of the year; and as often as he pumped, till about August, when we finished hauling the hay off of the field. After August I didn't go back and I can't say.

Q. Then was it during the time you were planting the grain or harvesting the grain that you noticed this, or both times?

A. It was during the time of plowing and planting.

Q. And how long a time during the plowing andplanting was it that you noticed this changing condition of the water?

A. It was during the time of plowing and planting, and it

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lasted through to the harvesting and baling the hay and so forth?

C. Did you notice the same condition while you were cutting and harvesting that you hadnoticed before while you were planting?

A. It was the same thing. Every day he pumped the springs would be dry.

Q. And when he didn't pump?

A. We had water.

Q. When he was pumping where would you get water?

A. Further south, -- something like 75 or 100 yards further south.

Q. In the same water way?

A. Yes, sir.

THE COURT/Qq/ Whereabouts is this land that you were cultivating relative to the upper spring where you watered your horses?

A. On the east and west side.

Q. On both sides of the stream?

A. Yes, sir.

BY MR. WATERS. Q. Is ther more than one place in that section of the country known as Rubio's and Rubio's well, or only one place?

A. Only the one place that I know of.

Q Where is that place situated with reference to the Cucamonga winery, in what direction is it from the winery?

A. A little north west. Mostly north-- nearly north.

Q. That is on the Rubio place and called the Rubio well?

A. yes, sir.

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Q. Where is that well situated relative to the place where you watered your horses?

A. About due north.

Q. And the Rubio well is about due north from the place where you watered the horses?

A. Yes, sir.

Q. About how far distant?

A. About a quarter of a mile.

CROSS EXAMINATION.

MR. CHAPMAN. Q. You say you were there two years, 11 years ago and 10 years ago?

A. yes, sir.

Q. This is 1907. Did you go there and cultivate that land the first time in the year 1896?

A. In 1895, in November, we commenced plowing the first time.

Q. That , then, next fall would be 12 years ago?

A. The coming fall it is 12 years ago.

Q. In 1895 and in the spring of '96 you had water to water your horses?

A. yes, sir.

Q. How far from this place where you watered your horses was it to where you were at work?

A. The nearest point would be about 30 yards , I suppose.

Q. And the furtherest how far?

A. In the neighborhood of about a mile.

Q. You commenced plowing in ~~1894~~ 1905; did you commence plowing the next year, in November, 1906?

MR. WATERS. You are 10 years off.

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Q. 1895, I mean?
A. The second year, I think we commenced in November 1896.
Q. 1896?
A. Yes, sir.
Q. What time of the year was it that you observed for the first time that there wasn't water enough in this place where you were accustomed to water your horses for them to get a drink?
A. It was early in the year, sometime in the spring. I can't say as to the month.
Q. Did you know of any work in the way of cutting trenches or ditches in the cienegas or about them?
A. I have seen ditches but I haven't seen them cut any.
Q. But you saw them after they were?
A. Yes, sir.
Q. Do you know when the first work of that character was done?
A. No, sir.
Q. Do you know that work of that character was done in the year 1896?
A. It had been done before.
Q. Was there any more of it done in 1896?
A. Not that I know of.
Q. What time before was it, that it had been done?
A. I don't know.
Q. Was there any work of that kind done in 1897?
A. None that I know of.
Q. How long did you continue to occupy the premises when you had them under cultivation the last year in 1896 and 1897?

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A. I think in August. I think we got through in August.
Q. Of 1897?
A. Yes, sir.
Q. That is, when you harvested your crop?
A. And hauled the hay off.
Q. Haven't you know of any work being done in the way of cutting trenches of tunnels or extending tunnels in that vincinity between the time when you first went there in the fall of 1895 and when you left in August 1897?
A. I did not.
Q. Do you know the Y tunnel.
A. Yes, sir; I know here it is.
Q. Do you know when they were constructing it?
A. No, sir.
Q. Do you know that they were extended ever beyond the point where they first ceased?
A. I do not.
Q. When they first ceased to work they were to a point of about 250 feet--
A. I don't know anything about it?
Q. Do you know what is the extent of those tunnels now, or what it was in 1897 when you lived there?
A. No, sir.
Q. Did you pay any attention to the waters coming from the tunnel at all?
A. I had several drinks from the mouth of the tunnel.
Q. Was that the only observation that you made of them?
A. Yes, sir.
Q. Where did you water your horses with reference to the

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mouth of the tunnel?

A. I watered the horses at the head springs?

Q. How far from the tunnel?

A. About a quarter of a mile.

Q. In what direction?

A. West from the tunnel.

Q. West from the mouth of the tunnel?

A. Yes, sir.

Q. And then the tunnel extends in a northerly direction I believe.

A. That is the way it lookedto me, to see into the mouth of it, but I couldn't say.

Q. About how much water was flowing at the place where you watered your horses?

A. Several inches.

Q. About what depth was the water?

A. Hard telling. It was running over rocks. It is hard telling how deep it was. It was deep enough to water horses in.

Q. Without any artificial work being done to collect it?

A. In would have been, but it was running so fast that we dug out little pools for the horses to drink out of.

Q. How deep is the pool-- how deep was the water in the pool?

A. The deepest place was aboutt 8 inches deep

Q. Was it a circular hole that you made or square?

A. I don't remember.

Q. About what was the diameter of it; how far was it across that pool?

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A. About 4 feet, I guess.

Q. How many horses did you have there to water?

A. 4 and 5.

Q. When they took a drink did it make any difference in the depth of the water?

A. I couldn't see any difference at all.

Q. Did you construct that place for them to drink when you first went there in the fall of 1895?

A. Not when we commenced the first work? We watered several days the best the horses could drink out of the creek without digging the pool.

Q. And then you constructed that place for them to get water?

A. Yes, sir.

Q. What was the character of the soil right around it?

A. Gravelly and rocky.

Q. Horses had no difficulty in walking up to it?

A. No, sir.

Q. It wasn't swampy or boggy?

A. No, sir.

Q. Do you remember when Rubio first commenced pumping?

A. Not, the date.

Q. Do you remember the month and the year?

A. Not the month, but it was in 1907 I think.

Q. 1897?

A. 1897, yes, sir.

Q. And what kind of a pump was he running?

A. I don't know.

Q. About how much water was he pumping?

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A. I can't tell you.

Q. About how long at a time did he pump?

A. A couple of hours, I guess, or such a matter, the first time.

Q. What was he pumping for?

A. I think to lower the water in the shaft, to lower his shaft.

Q. Simply to get the water out of his way so that he could work?

A. I think so.

Q. Do you know anything about how deep the shaft was when he first commenced pumping?

A. In the neighborhood of 60 feet, I think.

Q. The well had already been sunk to that depth?

A. In the neighborhood of 60 feet.

Q. Then what was he doing? Lowering it?

A. He was lowering it.

Q. And pumping the water so as to get it out of his way so that they could carry on the wok of lowering the well?

A. Yes, sir.

Q. Was there any difference in the length of time that he pumped during the time that he was lowering this shaft?

A. Some days he pumped longer than others.

Q. And over about what time would you say? You say now about two hours. About what would be the shortest time of pumping on one of these occasions when they were pumping the water out of the way?

A. I don't know. Some times he would pump only a few minutes and then he would have to repair, and then he would

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pump half a day. I never paid much attention to him.

Q. By what means or tests did you arrive at the conclusion that that water would disappear from your water placing when the pump was run an hour?

A. The first day he pumped I went down to water the horses and found no water and I didn't know what became of it. Afterwards it happened again and I know he was pumping the second day again; and after he stopped pumpin the first time the water came back inside of a couple of hour, some of it; it started to come back an hour and a half after he quit pumping and I filled my canteen.

Q. After you went back the first time after it disappeared, how long had it been before that you were at that pool, previous to the time that you observed the water was gone?

A. Not more than 3 or 4 days before, because we worked every day that the weather would allow us to.

Q. What was the trouble which prevented?

A. What is that?

Q. How did the weather prevent you from working?

A. When it rained we didn't work. I don't know whether it rained in that time of the year or not, but that would be the only reason that we would stop work-- when it rained.

Q. How long did you continue your operations of planting the crop from the time that you first observed this phenomenon -- the water disappearing?

A. I can't state the time, whether it was in plowing or cutting. I think it was in plowing. We finished plowing and seeding, in February, I think.

Q. And then did you leave there until the harvest time?

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A. Yes, sir.

Q. And about what length of time were you gone before you came back to harvest the crop in 1897?

A. About two months or a little over.

Q. During that time had you been to the place at all?

A. Yes, sir.

Q. Had you been to that watering hole?

A. Yes, sir.

Q. Did you observe the condition there then?

A. Yes, sir .

Q. Did you find water there then?

A. Some times, and sometimes not.

Q. And when you came back in about two months did you begin harvesting then?

A. Yes, sir.

Q. And continued till what time?

A. Until some time in August.

Q. What did you harvest first, what kind of a crop?

A. Barley.

Q. How much did you have in?

A. 200 acres.

Q. And the harvest extended over until August?

A. The cutting and stacking and baling and hauling the hay home, yes , sir.

Q. From the time you commenced harvesting how much of the time were you on these premises until you had completed it in August.

A. Pretty near all the time.

Q. When the water would disappear and then return , would it

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raise to its usual height?

A. Yes, sir; apparently. Of course, we never measured it.

Q. As near as you can judge by your eye, there was no difference?

A. Yes, sir. I couldn't tell no difference.

MR. WATERS. Q. What kind of a place was it that this water raised and then didn't raise? Describe the locality?

A. Why, it is in the bottom of the creek wash-- the Cucamonga wash. It raised right out of the bank on the side.

Q. And which side, east or west?

A. The east side-- northeast side, rather.

MR. CHAPMAN. Q. Do you understand this map or diagram number 1, here, of the plaintiffs?

A. I never looked at it.

Q. Do you think you could point out on that exhibit where that place was?

MR. WATERS. Unless this witness is familiar with that map, I think that is unfair.

MR. CHAPMAN. Why? If he can point it out what difference does it make?

THE COURT. I think the map ought to be explained to the witness perhaps, to some degree, so that he will understand what it represents.

MR. CHAPMAN. I only asked him to look at it and see if he can. If he can't, I don't propose to press it.

Q. That is the Base Line and these two branches marked The Y tunnel.

MR. BRITT. Wouldn't you better point to him the index of the wash?

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MR. CHAPMAN. Point to him anything you please. If you think you can't do it, don't try.

A. I think this here is the first spring.

Q. The place where you had your finger, the figures that are marked, are what? Can you read them?

A. 1140.

Q. I think it is 1440.

A. It looks like 1440.

Q. That is about where you think it is.

A. Yes, sir.

MR. BRITT. The witness having indicated the point on one of the contour lines near the San Bernardino Base Line as marked on that map where the figures 1440 occur.

MR. CHAPMAN. And right on the east side of the wash.

MR. STEVENS. Between 1440 and 1430.

A. I think it is right up in here, close to 1440.

MR. BRITT. Q. We had described the place correctly to which you pointed on the map, have we?

A. Yes, sir.

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N. S. MILLIKEN.

N. S. MILLIKEN, a witness produced by intervenors, being first duly sworn, testified as follows:-

DIRECT EXAMINATION.

MR. HASKELL. Q. How old are you, Mr. Milliken?

A. 49 years.

Q. Where do you reside?

A. Cucamonga.

Q. How long have you resided there.

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A. I landed in Cucamonga the first day of September, 20 years ago.

Q. That would hae been in 1887?

A. No; 1886. I said last Septemb r.

Q. Since you have been in Cucamonga have you known the property now owned by Matthew Turner and his associates?

A. Yes, sir.

Q. Have you ever had any business connection with that property?

A. Yes, sir.

Q. In what capacity?

A. I had it under a lease for five years.

Q. When was the beginning or about the beginning of your term of lease?

A. '88.

Q. Who took possession of the property and charge of it after the termination of your term of lease?

A. My father.

Q. And you and your father have been continuously in charge of that property from the time you first took it down to the present time, have you?

A. Yes, sir.

Q. While you and your father have had charge of that property has there been any vineyard growing upon it?

A. Yes, sir.

Q. How many acres?

A. Somewhere between 25 and 30 acres.

Q. Has that vineyard been irrigated?

A. Part of the time.

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Q. Was it irrigated when you first took it?

A. Yes, sir.

Q. Did you irrigate it whilst you had it?

A. Yes, sir.

Q. Did your father irrigate it after he took possession of it?

A. Yes, sir.

Q. Down to about what period of time?

A. Down to I think it was 1901.

Q. With what water was it irrigated?

A. With Cucamonga water.

Q. How much?

A. We were supposed to have six inches of running water.

Q. Continuous flow under a four-inch pressure?

A. Continuous flow under a four-inch pressure.

Q. How was it ~~xxx~~ delivered? In a continuous flow or by heads?

A. It was delivered by heads.

Q. How many heads each month?

A. We got six heads a month. Six regular heads, and then we got one extra, because the pipe wouldn't carry the full 30 inches.

Q. And how many inches were delivered in each head?

A. About 30 inches.

Q. And besides that, you had a continuous stream did you, delivered on the place for domestic purposes?

A. Yes, sir.

Q. Through what kind of an opening?

A. I think it was through an inch pipe.

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Q. Now, was this water continuously used from the time you took charge down to 1901, or was it an interrupted use?

A. No; it was a continued use.

Q. Was that water necessary for the beneficial irrigation of those vineyards?

A. It was.

Q. Has there been any shortage of water since 1901?

A. There hasn't been any to irrigate with.

Q. For what reason, if you know?

A. Well, the zanjero refused to turn it on. He said there was no water for the Turner ranch.

Q. Has there been a shortage of water in the creek-- Cucamonga Springs?

A. Yes, sir.

Q. I think you used the term Cucamonga Creek once in your testimony, if I understood it. What did you mean by "Cucamonga Creek"? Do you mean the Cucamonga Springs?

A. I meant the Cucamonga Springs, if I used that.

Q. How has this water on the Turner ranch been conveyed from those springs to the Turner ranch?

A. Through pipes.

Q. Wat pipes?

A. Pipes controlled by the Cucamonga Water Company.

Q. Did the Turner ranch have an interest in the pipe line for the conveyance of this water?

A. Yes, sir.

Q. Who turned this water on and off when the turns came for its delivery?

A. The zanjero was supposed to turn it on and off. And we

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had an arrangeent with him that if he wasn't there in time to turn it on we turned it on.

Q. How often did you people turn it on? What portion of the time?

A. Most of the time.

Q. Was there any differe ce in the amount of cro p produced on that vineyard whilst it was being irrigated from the amount of crop produced on the vineyard when it was not being irrigated?

A. Yes, sir; a big difference.

Q. What was the difference, about?

A. What do you mean? In dollars and cents, or in the quantity of the crop?

A. First in quantity of crops.

A. We used to get from four to five tone an acre when we had water. And it has dwindle down till last year there was only abott a ton to the acre.

Q. What would you estimate the difference between the market value of the crop?

A. Between $25 and $30 an acre.

Q. Were there any walnut trees on that place when you first knew it?

A. Yes, sir.

Q. About how old were they?

A. I think they wer e about 12 or 14 years old.

Q. What has become of those trees?

A. They has been dug out.

Q. What had been raised on the balance of this property?

A. Barley hay.

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Q. Where is this property situated with reference to the Cucamonga vineyard on Hellman Avenue?

A. It is east of the Cucamonga Vineyard, and Hellman Avenue runs between the two places.

Q. Do you know the property owned by George D. Haven?

A. Yes, sir.

Q. Do you know whether or not he has any water right?

A. Yes, sir.

Q. What is that water right?

A. He has a right of four inches of continuous flow.

Q. How delivered?

Mr. Chapman: We obj ct to that method of proving title.

Mr. Haskell: We will prove the title by records. We don't offer this for that purpose.

The Court: What is it offered for?

Mr. Haskell: To show the use of the water. That is what we are trying to arrive at.

Q. How long has Mr. Haven used that water?

A. Ever since I have been there. Twenty years.

Q. Where has that water been used?

A. It has been used on his home place.

Q. Where is the home place situated with reference to Hellman Avenue, east or west?

A. It is east; about two miles east.

Q. And what street passes by or near the George D. Haven place? Does it have a name?

A. On the west?

Q. Well, on the north.

A. San Bernardino Road.

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Q. And does Mr. Haven't property adjoin that road on the south?

A. Yes, sir; his place is just south of that. The road is just north of the place.

Q. How has Mr. Haven used that water?

A. He has used it for domestic purposes and for irrigating around his home place, the flower garden and the shade trees.

Q. Any vegetable garden?

A. Yes, sir.

Q. An area of about how much?

A. About two acres, I should think.

Q. Has he devoted that water to any other use?

A. He used it around his winery when he made wine.

Q. How many acres of vineyard has he altogether?

A. He has 450 acres.

Q. Has he a winery at his home place?

A. He has.

Q. And is it necessary in the manufacture of wine to have water?

A. Yes, sir.

Q. For what purpose?

A. Washing receptacles.

Q. How much water does that take to use in the winery of a capacity such as his?

A. It would take all the water he has.

Q. Do you know the property-- the 80 acres owned by Patricio Marsicano?

A. Yes, sir.

Q. Where is that located with reference to the Turner place?

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or in reference to the Cucamonga vineyard?

A. It is east of the Turner place. The north line of the Marsicano place is the same as the north line of the Turner place, and it is about half a mile from the east line of the Turner place.

Q. How many acres are there in that place?

A. 80 acres.

Q. Has there been any water used on that place since you have known it?

A. Yes, sir.

Q. For how many years?

A. I think there has been water used there for the last seven years.

Q. For what purpose?

A. For a China garden-- vegetable garden.

Q. About how many acres of it has been irrigated as near as you can tell?

A. I think there has been continually 20 acres irrigated.

Cross Examination.

Mr. Chapman: Q. How long ago has it been since you and your father took charge of the Turner place?

A. About 18 years; between 17 and 18 years.

Q. And during that time have you had it under a lease?

A. Yes, sir.

Q. All the time?

A. All the time.

Mr. Joliffe: Q. Where do you live, Mr. Milliken?

A. At present my family is living in Ontario; but my home is in Cucamonga.

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Q. You have not been in the vicinity of this vineyard you have been testifying about, the Turner vineyard--

A. I have a vineyard about two miles and a half east of that.

Q. Do you use water on your vineyard?

A. No, sir.

Q. What kind of grapes do you raise on your own vineyard?

A. From three and a half to six tons to the acre.

Q. How large crops were raised on the Turner vineyard during the time you had it?

A. From three and a half to four tons.

Q. About the same as on your vineyards that were not irrigated?

A. Yes, sir.

Q. Are vineyards in that locality usually irrigated?

A. You mean in the locality of the Turner ranch?

Q. Yes.

A. Yes, sir.

Q. What vineyards that you know are irrigated in the vicinity of the Turner ranch?

A. I believe there is only one vineyard there now and that is the Mrs. Frank Smith vineyard, and that is irrigated.

Q. Formerly the Louis Smith vineyard?

A. No, sir; the Louis Smith vineyard is no more.

Q. Where is the Mrs. Frank Smith vineyard situated?

A. About a mile northeast from the Turner ranch, on Archibald Avenue.

Q. You gave up the Turner vineyard about what time?

A. I gave up the Turner vineyard about-- I went on first

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in-- I think it was May, 1893

Q. Has your father had it since that t ime?

A. Yes, sir.

Q. Have you seen it frequently since the time you gave it up?

A. Yes, sir; I have seen it right along.

Q. About how old are the vines on that vineyard-- the Turner vineyard?

A. I think some of the vines were put out in 1885 and there were some there the n that were 10 or 12 years old.

Q. About what proportion of the old vines were there when these others were put out? You say there are about 25 or 30 acres of vineyard?

A. About half of them.

Q. So there was about 12 to 15 acres in '85?

A. Yes, sir.

Q. Are those wine grapes or raisin grapes?

A. Those that were put out in '85 are wine grapes.

Q. The old vineyard, what are they?

A. Muscat; raisin grapes.

Q. You have had considerable ex erience in raising grapes in that locality?

A. Yes, sir.

Q. Do you consider that from your experience in raising grapes that it is of advantage to irrigate wine grapes?

Mr. Britt; Objected to as irrelevant, immaterial and not proper cross examination. The witness was not introduced as an expert on that subject.

The Court: He has testified to the difference between irri-

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gation and non-irrogation.

Mr. Britt: He has testified to that.

The Court: I think it is proper cross examination. The objection is overruled. The question should be confined to this vicinity, in any event.

A. I would say it is owing to the soil they are raised on. I will say that in soil such as the Turner ranch, in the Turner ranch it is an advantage to irrigate them.

Q. Would the quality of a grape be as good in an irrigated vineyard as in one that is not irrigated?

A. I don't know as the quality would be quite as good.

Q. Wouldn't be quite as good?

A. I don't think it would .

Q. In what respect do you think it would be an advantage to irrigate a vineyard of wine grapes, if the quality of the grape would not be so good?

A. Well, you would get so much more grapes to the acre that it would offset that.

Q. You have got from three to four tons to the acre when it was irrigated?

A. Yes, sir.

Q. If not irrigated and well cultivated how much would you get?

A. Last year we got about one ton to the acre.

Q. Do you know how it was the year before last?

A. Yes, sir; we got about a ton and a half.

The Court: Q. Has it been irrigated since 1904?

A. No, sir; it hasn't been irrigated since 1901.

Mr. Joliffe: Isn't the failing of the crop owing to the fact

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that the roots of the vines growing near the surface of the soil, not having been irrigated for a long time, whereas if they hadn't been irrigated the roots would have run do n deeper in the soil and would not have suffered for the lack of water?

A. Well, it might have been.

Q. And isn't that a condition which will be remedied in time by water being withheld?

A. I don't know. That vineyard has at first kept up and then it commenced to drop off and it has continually done so up to date.

Q. Then it has been failing for some time?

A. It has been failing since we have gone without water

Q. Isn't it usual for a vine of that age to begin to decline in productiveness any way?

A. No, sir.

Q. Where did you get this water that you used for irrigating during the time that you had the place?

A. From the Cucamonga Springs.

Q. It came through the pipes of the Cucamonga Water Company?

A. It came through the pipes that they controlled.

Q. It was handled by their zanjero?

A. Yes, sir.

Q. And it was part of the Cucamonga pipe system?

A. Yes, sir.

Re-Direct Examination.

Mr. Haskell: Q. Is there any difference between the soil on the Matthew Turner property and the soil where you have

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grown your grapes?

A. Yes, sir.

Q. What is the difference?

A. On the Matthew Turner place it is that they all a heavy and a somewhat adobe soil; while on my place it is a sandy loam.

Q. And which soil is better adapted to growing grapes without irrigation?

A. On my place; the sandy loam; I can cultivate that or plow it at any time of the year; while the Turner ranch there is just certain times that you can work it.

Q. Is the Matthew Turner water owned by any stock in any corporation?

A. No, sir.

Q. Through what pipe system was the water delivered to the George D. Haven property?

A. Through the Cucamonga.

Q. And to the Marsicano property?

A. Cucamonga.

Q. And from what source was the water taken, if you know?

A. Originally from the springs.

Re-Cross Examination.

Mr. Joliffe: Q. You say that the Turner property was of an adobe nature. Is adobe soil as good for vineyard purposes as more sandy soil?

A. No, sir.

Q. I believe you stated there was but one vineyard irrigated in that region of the country, and that is the Frank Smith vineyard?

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A. Yes, sir; well, there is other vineyards there, but what I meant was anywheres near the Turner ranch.

Q. And yet there is a large scope of country that is in vineyard there?

A. Out this way along the Santa Fe there is a very large scope.

Q. Southeast and west of there there is a very large vineyard?

A. There isn't much west, but east and south there was quite a lot.

Q. What is the extent of the Frank Smith vineyard that you have testified to?

A. I think there is 10 or 12 acres there altogether now.

Q. And the amount of vineyard in that locality runs up into the thousands of acres?

A. Yes, sir.

The Court: In the irrigation of vineyards, when there was water, would you practice irrigation in the summer months or only in the winter?

A. Through the summer.

Q. Was that because it was necessary to irrigate? Or was it because the soil was of a character that it couldn't be worked without softening it?

A. They considered it necessary.

Q. You think the plant needed the water?

A. Yes, sir.

Mr. Haskell: Q. You think the Cucamonga Vineyard Company's vineyard is on the west side of the Turner place?

A. Yes, sir.

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Q. How does the soil of the Turner place compare with that?

A. Just about the same soil.

Mr. Britt: Q. How long since you first began to notice that Cucamonga vineyard?

A. I have noticed the vineyard ever since I have been there.

Q. That is, in '83?

A. No; I came there in 1886.

Q. The Cucamonga Vineyard was irrigated at that time, or not?

A. Yes, sir; it was.

Mr. Joliffe: Q. Do you know the condition of the Cucamonga vineyard at the present time?

A. Why, yes; to a certain extent I do.

Q. What is that condition? Is it in good condition or not?

A. I know that last year the crop was very poor compared with the crops that they formerly had there.

Q. What kind of a crop did they have last year?

A. They got a little over half as much as they used to when they had water.

Q. Do you remember a conversation you had with me at Ontario about two weeks ago?

A. I do.

Q. Didn't you tell me in that conversation that for a year or two after that water slacked off they had poor crops but that since that they have had better crops?

A. No, sir; I don't remember that. If I did, I didn't intend to.

Q. Don't you remember saying that it was better than it was two years previous, and that the vineyard was now in

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better condition and flourishing?

A. It is a fact that it is looking better at this time of the year than it has for for three or four years. All the vineyards do that now.

Q. Do you know what the yield of the vineyard was last year?

A. I have heard it was between 700 and 800 tons.

Q. You know only what you have heard?

A. That is all.

Q. From whom did you hear it?

A. From men who were working on the vineyard.

Q. ~~Those men~~ You saw the vineyard frequently yourself?

A. Yes, sir.

Q. Did it seem to be in flourishing condition last year?

A. No, sir; it did not.

--o--

F. E. TRASK.

F. E. TRASK, heretofore sworn and examined, being recalled by plaintiffs, testified as follows:

Direct Examination.

Mr Britt: Q. Mr. Trask, you have those figures which we spoke to you about this morning, or some of them?

A. Yes, sir; I think I have them. I made an effort to get what you asked for.

Q. All right; proceed with the measurements.

A. One of your requests was for such measurements as I had on the wells during the year 1903, and I spent the noon hour with my records and I find that I have only two measurements. I am not sure whether they were put in evidence be-

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fore or not. I have a record made June 23, 1903, in which I find well no. 8 was pumping 91.2 inches.

Q. That is one of the Haskell wells?

A. Yes, sir; no. 2. Well No. 3 was pumping 60.8 inches. That is all of the measurements I can find of the wells that year. But I wish to supplement the list which I put in covering 1904. While hunting for these figures I found a little memorandum of a couple of measurements made earlier in 1904 than those I put in the record, which with your permission I wil put in.

Q. Yes, sir.

A. January 22, 1904:

Well No. 7, 55.30 inches;

Well No. 8, 53.54 inches.

Well No. 3, 74.60 inches.

Well No. 4, 48 inches.

February 8, 1904:

Well No. 7, 56.7 inches;

Well No. 8, 52.16 inches.

That completes the measurements of the wells as you requested, in so-far as I have been able to find them.

Your second request was for a measurement of the water made over the weir in the Eddy tunnel at a point just above where the water passes on to the 90-acre tract, and the weir designated in all my notes and on my books is called Weir B.

Q. By that present bulkhead?

A. Yes, sir.

The Court: Q. Is that the one at the foot of the shaft?

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A. This is the weir that is in the shaft on the lands just off of the 90-acre tract near the northwest corner.

Q. Is that the one that is flooded?

A. It is flooded at this time; yes, sir.

1903:	June 23,	227.8 inches;
	August 10,	224.0 inches;
	August 24,	228.9 inches;
	October 6,	207.2 inches.
	December 21,	231.5 inches;
	December 30,	249.18 inches;
1904:	January 22,	252.30 inches;
	February 8,	246.0 inches;
	April 11,	214.24 inches;
	April 28,	198.6 inches;
	May 7,	195.52 inches;
	May 26,	194.83 inches;
	June 18,	185.35 inches;
	June 27,	192.06 inches;
	July 2,	186.70 inches;
	July 16,	179.95 inches;
	July 26,	175. 30 inches;
	July 30,	171.37; inches;
	August 8,	167.48; inches;
	August 13,	161.65 inches;
	August 27,	155.30 inches;
	September 30,	150.84 inches;
	October 8,	137.82 inches;
	November 19,	124.65 inches;
	December 24,	121.14 inches;

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1905:	February 4,	147.70 inches;
	February 18,	139.10 inches;
	March 11,	140.30; inches;
	April 3,	156.55; inches;
	April 22,	162.30 inches;
	May 6,	150.20 inches;
	May 27,	152.75 inches;
	June 9,	152.10 inches;
	July 29,	152.75 inches;
	August 16,	152.75 inches;
	September 8,	139.10 inches;
	September 23,	125.22 inches;
	September 30,	124.65 inches;
	October 7,	119.37 inches;
	October 14,	116.50 inches;
	November 11,	119.37 inches;
	November 18,	125.80 inches;
	December 2,	128.19 inches;
	December 20,	136.59 inches;
	December 29,	137.82 inches;
1906;	January 20,	140.30 inches;
	February 24,	143.96 inches;
	March 19,	148.93 inches;
	April 16,	152.11 inches;
	May 19,	152.78 inches;
	June 30,	156.53 inches;
	July 27,	157.81 inches;
	September 1,	161.65 inches;
	September 29,	161.65 inches;

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September 15, 161.65 inches;
October 26, 161.65 inches;

That is all I have.

Q. All these figures which you have given mean inches of flow?

A. In accordance with the definition which I gave in the early part of my testimony.

Q. Was that bulkhead constructed under your engineering supervision?

A. Yes, sir; in so far as it had direct engineering supervision. I drew the plans and made a final decision as to the location of that bulkhead.

Q. You selected a place where the soil appeared to be impervious to water? That is, the soil penetrated by the tunnel?

A. I first selected one of the old shafts which was at a point that N. W. Stowell suggested to me was a good location, he having had charge of the driving of that tunnel and being familiar with it. After considerable expenditure, I found that the location was not a good one, and then I believe I consulted with several parties, among them Mr. Johnson, the zanjero of the Cucamonga Water Company, who had worked in the tunnel at the time it was driven, and from such information as I got from Mr. Johnson and from others I located another point further up the tunnel and sunk a shaft purposely for this bulkhead work, and it proved to be in good material, and the bulkhead was constructed at that point.

Q. What was the nature of that material which you considered good material for that purpose, Mr. Trask?

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A. It was a very dense silt, which I believe Mr. Stowell in our old McPherson case described as sandstone. It was a material which I would not classify as sandstone, and yet it had something of the appearance of it; but it was quite even and it was thoroughly solidified. So thoroughly, that we excavated a large chamber for the concrete work without using any protection for it, and it stood up as well as rock.

Q. Would you characterize it as a compacted clay?

A. No; there was a large amount of silt in it. It had better cementing qualities than clay, because when wet it wouldn't run like clay, although there was considerable clay in it.

Q. Mr. Waters suggests that I inquire of you whether in this silt or silt and clay which you have mentioned there were imbedded pebbles and boulders and gravel or other material of stone.

A. In that part removed by excavation I saw no boulders of any size. There were small pebbles and some gravel and that added to the cementing qualities. That is, it added to the compactness of the mass. The fine silt and clays and gravel gave it a cemented condition and great stability and imperviousness at that point.

The Court: Q. You relied on that material surrounding the bulkhead as being practically impervious?

A. To all intents and purposes. I don't think there would be a large amount of water passing the bulkhead. It is practically impervious.

Mr. Britt: Q. Is it the sort of material which geologists

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call conglomerate?

A. "Conglomerate" is a term that covers about everything, especially when you have more than a single character of material combined. That would be classed as conglomerate, but the word "conglomerate" is rather indefinite. It was a conglomerate to this extent, that it was made up of particles of clay and particles of the finest kind of silt, and probably all or a greater part of it represented decomposition of wash material, that is, material which had undergone a rotting process and decomposed partially into clay and partially into sand. It was in a semi-decomposed condition, all of it. There was very little firm, hard, quartz pebble in it. There was some sand and some few pebbles scattered through it.

Q. From the nature of the material did it appear-- and I am assuming now that you possess a knowledge of geology, which would be very convenient in your profession, but which yet you do not profess to possess,-- did it appear to have lain down in water or mixed together by the action of water?

A. Undoubtedly all that material has been placed where it is by water.

Q. Did that kind of material extend throughout the locality where the bulkhead was placed in the tunnel?

A. With this exception: That in excavating below the tunnel to put down a rib of concrete, the men at between three and five feet reached a point where there seemed to be a coarser material, and I immediately stopped the work and put the concrete in without going any further, for fear I might open up a gravel pocket, which was what I was trying

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to avoid.

Q. Of course, this bulkhead is put in longitudinally with the tunnel?

A. The bulkhead is put in at right angles to the tunnel and is a mass of concrete-- three independent ribs.

Q. I mean lengthwise of the tunnel, which it must necessarily be for some distance.

A. It is a mass and it has form. But the object was to thoroughly cement the tunnel bore with the concrete, and that meant lateral extension.

Q. How long?

A. My recollection is that the concrete mass where it takes the bore of the tunnel is about 30 feet, running with the tunnel, and that it projects at the center rib or expansion, which I made of concrete,-- it projects some five or six feet from the bore of the tunnel.

Q. I understood Mr. Locke to say that there are two pipes through the cement or concrete bulkhead.

Q. The regulation of the water through the bul head is through two pipes; one, I believe, is a 10-inch and the other, I believe, a 12-inch, and there are gates installed in these pipes, and arranged so that they can be regulated, opened or closed.

Q. Those gates are operated by means of screws?

A. They are a screw gate, as I remember it.

Q. And the screw is to be operated from the surface or from the shaft?

A. They are operated from within the shaft.

Q. And the shaft extends above them to the surface of the

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ground?

A. Yes, sir.

Q. What is the depth of that shaft?

A I haven't the figures of it.

Q. These measurements which were made in 1903 of the water flowing at that weir included all the water flowing at that time flowing in the tunnel? I think you stated the weir is situated below the ingress of any water from any well.

A. Measurements made in 1903, as well as all the measurements subsequent to those of that date and year, were made in the shaft and represented all waters whether gathered in or from the tunnel or from the wells connected into the tunnel. They represented all the waters flowing on to the 90-acre tract. The object of the weir location at that point was to ascertain the amount of water that flowed on to the 90-acre tract, in order that the division at the mouth of the tunnel at the south end of the 90-acre tract, there could be a correct determination as to the interests and rights of the Cucamonga Water Company and the San Antonio Water Company and the Ontario Power Company, who were the owners of all the water west of the 90-acre tract.

Q. Then those measurements at that weir represent simply the water which came from the land north and west of the 90-acre tract?

A. And passed on to the 90-acre tract; yes, sir.

Q. Did you at the same time make measurements of that water which made its ingress into the tunnel on the 90-acre tract?

A. I made only, as I recollect it, two or three measurements of the waters that were flowing into the 90-acre tract from

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one , two or three wells, I forget the number-- three, I believe-- wells that are the property of the Cucamonga Water Company and located on the 90-acre tract. I won't be sure whether I made more than one. I think, however, that I made two measurements.

Q. What year?

A. Probably 1904.

Q. You have some notes of those?

A Whatever I have is of record.

Q. We get at this in a fragmentary way, but when you have time I wish you would go to your record and see what you have. At the time you made those measurements in 1903 had the tunnel been connected with the large well called by you "well no. 9" and in this map exhibit 1 as "No. 14"?

A I can't answer that question; I have no record in my notes. I had that in mind when I looked these up and find there is no memorandum covering the condition of well no. 9. My recollection is that there were people working there. For instance, I know they were piping the tunnel from the point of the 90-acre tract on; but I had nothing to do with it in any shape. And it seems that I made no note of any observations at those times.

Q. When you aimed to make those measurements at the weir described somewhere near the line of the 90-acre tract in 1904, had that well no. 9 been connected with the tunnel?

A. I presume so. There are other people who are better authority for those matters than I, because I had nothing to do with that and actually gave them no attention. My object was simply to measure actually what was running off. I didn't

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care where it came from so long as it was running over that weir. That was my sole object.

Q. After the construction of that bulkhead last winter-- and, by the way, about the date of the completion of the bulkhead, have you it exactly?

A. I have not.

Q. Mr. Leeke was not quite sure as to the time. Did you make any observations after the bulkhead was constructed and the gates closed on the rise of the water in the wells above?

A I made such observations and pointed them out to you on that tabulated statement of well elevations this morning. On the last page of that tabulation you will find under well no. 9 the elevation of the water at different dates ,-- with reference to sea-level elevations.

Q. I will ask you to look on the tabulation. You are referring to the last column which appears on page 97 of the Reporter's transcript?

A. Yes, sir.

Q. And I notice the first entry in that column is of date January 11, 1907. That is correct, is it?

A. Yes, sir.

Q. And the elevation then was 1295.06. That means above sea level, does it?

A. Yes, sir; and I think that represents at that time practically the tunnel level. That is my recollection, and I think that was prior to the closing of the bulkhead gates. That is before the water had begun to back up in the tunnel.

Q. The next entry is February 2, 1907, when the elevation seems to have been 1320.6 feet. Are you able to say then

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whether the gates in the bulkhead were closed?

A. The bulkhead gates had been closedon that date and all the subsequent measurements of that well were made with the water backed up in shaft no. 9 as indicated by the elevations.

Q. It appears that on April 27 of this year the elvation of the water in that well was 1346.7 feet, does it not?

A. Yes, sir.

Q. While on May 6-- the present month-- it was 1339 feet?

A. Yes, sir.

Q. Had the gates in the tunnel been opened at that time?

A. The zanjero of the Cucamonga Water Company had raised that gate. I think he has had one or two sessions with it. I haven't kept any record of it. I know they have been going there promiscuously and lifting the gate.

Mr. Chapman: Q. Who?

A. The zanjero of the Cucamonga Water Company. They have been increasing the draft in the tunnel and it has had its effect on the water level.

Q. Did you make any observations on any of the other wells connected with the tunnel?

A. Not any.

Q. None except this well no. 9?

A. That is all.

Q. At whose instance did you make those measurements of water at the weir above the present bulkhead in the year 1903?

A. Those measurements and all other measurements-- I don't remember an exception-- that I have made of waters connected

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with that tunnel and which are in evidence here, were made at the request of the officers of the San Antonio Water Company.

Q. I believe you testified, but I am not quite sure, at a former period of your examination, that there was no pumping done from the wells above Sixteenth Street in 1906.

A. My testimony on that point was something like this, I think: That there was no pumping with the exception of a very small amount in connection with the Rubio place, in connection with the irrigation of that, and possibly the filling of some tanks there for domestic use for some employe who may have been on the company's property. But to all practical intents and purposes there was no pumping done in the year 1906.

Q. The amount for those purposes would be--

A. Immaterial.

Q. Infinitessimal?

A. Yes, sir.

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Q. You are acquainted with the character of that tunnel below the bulkhead and thence to its mouth: is it a timbered tunnel or is it a cemented tunnel? How does water find its way through it? In a pipe or through the bottom of the tunnel without any pipe assistance?

A. I presujme you refer to the tunnel we have been discussing, the Eady tunnel or tunnel No. 2?

Q. Yes, sir?

A. My knowledge of that tunnel consists of having paid a visit to it sometime in the 80's.

Q. That means between '80 and '89?

A. I mean sometime in the '80's; I think that tunnel was begun in '86 or '87, and my recollection is that I paid a visit to that tunnel in '89 or '90; somewhere along there; I couldn't say what date, but I do remember of having made a trip there, and of having gone into the tunnel with the employees of the compa driving it; it was a little trip of investigation; I don't remember the length of the tunnel at that time but they were in some hundreds of feet.

Q. You have been through it more recently?

A. I have never been through any part of it. The only knowledge I have subsequent to this little trip made through the lower end of it at the time it was being driven, the only knowledge I have is that gained by having descended at two or three different points through shafts to the tunnel level; namely the shaft where the weirs are located, off and above the 90 acre tract, the one referred to by Mr. Reed this morning as a measuring point within the 90 acre tract; in fact he referred to two shafts at or near wells owned by

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the Cucamonga Water Company; and from one or two points below where I made investigations, prior to building a bulkhead, and these examinations have enabled me to see a pipe line in the tunnel.

Q. What sort of a tunnel was it at the place where this xipux bulkhead was inserted?

A. It was piped; the water was running through a pipe, and partially back-filled; some timber had been taken out, and some had not been taken out; there was a cement pipe in the tunnel at that point.

Q. Of what diameter?

A. I think about an 18 or 20 inch pipe; I presume somewhere in my office I have a record of the size, but it was quite a large size.

Q. Was there any water flowing in the tunnel around the pipe, outside of the pipe?

A. There was some water outside of the pipe, when we got dug down to it; the pipe at that point was not cemented; it was laid with open joints; evidently the pipe was placed in there at a time when there was considerable water in the tunnel.

Q. It had the appearance of being a drain pipe originally?

A. The object of placing that as I understand it, was to place something that would be permanent, to provide against the caving, as timber would rot out quickly.

Q. Was there much water escaping around the pipe at the place of the bulkhead?

A. I think there was not; I think the material was so compact that there was not any escaping.

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Q. I understood you to say there was?
A. There was some water standing around the outside of the pipe; the ground was wet; I think the material was so dense at that point that the seepage amounted to nothing.
Q. You stated that you made an examination of the tunnel, and commenced operation at some other point for the insertion of a bulkhead, but abandoned it: was that point further north or further south than this place which you finally selected and utilized for the purpose of the bulkhead?
A. It was south of it and I think less than 200 feet.
Q. What is the situation of this bulkhead, with reference to the west line of the 90 acre tract?
A. Well, the bulkhead is in the lower half of the tunnel, and nearer the east line than the west line of the 90 acre tract. I have no occasion to make a location with reference to that line.
Q. The bulkhead is within the 90 acre tract?
A. It is within the 90 acre tract; the tunnel starts very near the southeast corner of the 90 acre tract, and bears a little to the west as it runs north; and the bulkhead is at a point, some 1500 or 1600 feet, or something like that, or 1800 above the mouth of the tunnel, and the locus of that is quite near the east line of the 90 acre tract; within a few hundred feet anyway.
Q. What was the object of selecting there an impervious material for the purpose of the bulkhead?
A. The prime object was to hold back the water, and that could not be successfully done in porous open material; consequently it became necessary to seek as impervious a

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material as it was possible for us to find, in order to accomplish our object.

Q. Did you select that point as far north as you found find it?

A. No.

Q. That is did you make a selection of a suitable place for the bulkhead as far north as you could find it?

A. No; I think I had in mind selecting a place as far south as I could find it with suitable conditions; the prime object in selecting a location was to get as impervious a material as possible; the second consideration was to get the location as far south as possible, in order to get all the area of volume above for storage purposes.

MR. WATERS, Q. I understand your object in putting that bulkhead in to be as nearly a possible to control the quantity of water running out of that tunnel at times when it might be wished to control it: wasn't that it?

A. Partially . The object to be sought there was to conserve water which was going to waste there at a time there when it was not required by the demands of the companies owing the water.

Q. And that was by damming the water back?

A. That was the only recourse; yes, sir.

Q. Now, then, in order to dam that water back, you did the best you could, from examining the material in and around the tunnel, and from getting information from those who had worked in the tunnel, in order to find as well as you could, a place in the tunnel where there was material that would be the most impervious to the seepage away of water? Wasn't that it?

A. I exhaused my efforts to get information as to the most

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impervious point in that tunnel, and I was necessarily forced to accept hearsay statements to a great measure, because the tunnel was out of sight; it was constructed and lined up, and it was ~~a~~ impossible to get into it to make any personal study.

Q. The tunnel was in part timbered, so that you could not examine it, in part closed up, and in part cased with mortar or cement work,- masonry?

A. No, sir; Mr. Waters, there has been a pipe line laid in that tunnel, and in paying the pipe line or after laying they pulled out some of the timbering.

Q. Then the tunnel was closed?

A. They partly closed the tunnel up; it is practically impossible to get in there to make any examination; I had not the opportunity to make any examination.

Q. Now, then in putting the bulkhead in the tunnel, not at the head of it nor at the mouth of it, was a matter of selection of a place that was as nearly impervious, that was in material as nearly impervious as you could, from all the data you could ascertain, is that it?

A. Yes, sir; and near the mouth of the tunnel; as near the mouth as possible; I had two factors in mind: one was the possible volume of tunnel, and the voids connected with it, in which I could store water, and in order to get the greatest volume under control, and store it, it devolved upon me to locate that bulkhead as near the mouth of the tunnel as possible; and in so far as it was possible for me to locate it near the mouth I did so; that is, I put it as near the mouth of the tunnel as I could,- If I could have found

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impervious material two or three hundred feet from the mouth of the tunnel,- if I had after inquiry learned that the material there would justify sinking a shaft with the object of ascertaining whether it was good material or not, I should have sunk the shaft there.

Q. I am reminded of something that I am willing to give you the credit of traching me; that is, that any given stream at any given point, which is a stream of water, is either a making or a losing stream, at any given point where you are a mind to look at it: Do you recognize that idea as one that you have had yourself? It seems to me I got it from you in the Mill Creek case?

A. You got something of that kind; you left out one of the intermediate factors.

Q. Now, then, if you will apply that test to what you were doing there: were you seeking in that tunnel a place to make your bulkhead, as being up from the tunnel from the mouth at a place which was a point of losing, that is to say where water was wasting out into the material of the tunnel, or were you hunting a point at which the stream was yet a making stream in the tunnel, or did you wish to find a place, the boundary line between where the tunnel was making water, and where it was losing water?

A. I did not consider that at all.

Q. Now, then, in putting your bulkhead there, you did not consider whether the material below would lose water, if you put the bulkhead below?

A. No, sir; not strictly in that sense.

Q. Then why didn't you put it right at the mouth of the tunnel?

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A. Because the water would wash around it, and probably wash the whole thing out.
Q. Then the water would l ose there?
A. As a matter of fact it would, but that was not a controlling feature.
Q. Well, let us go back a little further: after going back a couple of hundred feet, the pressure of the water would not be h avy enough to blow out that large tunnel, would it, from there on, if you had put the bulkhead there?
A. Probably not.
Q. Then why didn't you put it there?
A. Because from the best information I could get it was not an impervious material, and the probabilities would be, the water would pass around it, and I would not accomplish my object.
Q. That was a point of losing water on the stream?
A. Well, it might have been.
Q. It was in fear of that why you did not avail yourself of that much more of the length of the tunnel, fear that you would lose the water by seeping around the bulkhead
A. Not that alone; that was one factor.
Q. What was the other one?
A. I had the fear that I might lose the bulkhead itself, by washing around it; it is necessary, putting in any heavy piece of work, to locate it where it will be staple; otherwise it is not a good location.
Q. Now, then, isn't it the fact then, that you did consider in locating the point at which to place this bulkhead, that you did consider the question as to whether above there

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wouldx be a storage capacity, and below there would not be likely to be as good, if you should put it below?
A. Well, that is probably true. I selected the point which I thought would offer the greatest resistance to the water which I proposed to hold back and above the bulkhead.
Q. Then you did locate the place of this bulkhead at a place which you thought would most conduce to constituting a storage area up stream from it, did you not?
A. That was one element.
Q. What other element did you have?
A. I had the other element, was the location at a point where the maintenance would be practically nothing; in other words at a place where the work would be practically permanent.
Q. This material in which you put the bulkhead, you have described as being composed of fine silt, silica, and clay, admixed, or mixed Is that it?
A. Yes, sir.
Q. Now, then, this mixing of these elements,- ingredients I guess wo ld be the more accurate term -
A. Put in both words.
Q. This mixing, does it lay there in the shape of stratification, or do you find these ingredients as you would find them in concrete, the result of mixing mortar?
A. Well, there is some appearance of stratification there; there would be some points where it would be a little more quartz or silica sand, and where it would mark a line across the shaft as we went down; it would would show that there had been some element of settlement there.

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Q. Now, then, will you find these streaks, which you attribute to stratification, do you find that running in straight or serpentine lines, xxxfxxxx ?

A. So far as we were able to observe it in the small area we had in our shaft, and in the tunnel, it seemed to run in about a straight line; it was not strictly regular, but it had the general appearance of laying in planes.

Q. Was that - we will call it the line of fracture, one way to express it,- the line of stratification was it level or tipped?

A. It was tipped.

Q. Which way was it tipped?

A. Well, the dip as near as we could tell was east of north.

Q. East and north?

A. East and north; probably nearer north than east; we had such a small area it was very hard to determine exactly.

Q. Did you find it dipped parallel with the line of direction of the main mountain, or transversely with it?

A. What do you refer to as the main mountain?

THE COURT: I suppose Mr. Waters means the range.

MR. HASKELL: Do you mean the mountain or the red hills?

MR. WATERS: I am not talking about any red hills; I am talking about a mountain.

A. If you refer to the general direction of the Sierras lying north, I would say that the dip was towards those mountains.

THE COURT: Supposing this represents a stratification, this being north, do you mean that it would slope toward the mountain, or the other way, south?

A. No, the dip goes down that way, if that is north.

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Q. Have you found that material elsewhere in that locality than at this place where you put the bulkhead?
A. I don't remember now that I have seen anything which was precisely the same; there are points around the red hill where there is a material quite similar.
Q. Haven't you seen, and didn't you see at this place, that there was imbedded in this material which you have described, also little stones?
A. At this particular point where the shaft was located, I do not remember of seeing pebbles of greater - I do not recall now of seeing anything that would have a diameter larger than an inch; in fact I don't know that I saw anything as large as that; I saw no pebbles that were sufficiently large to attract my attention,- a very few of the coarse pebbles.
Q. In this which you characterize as evidence of stratification, which you saw there, did you find in or about that stratification anything that would indicate vegetable matter, decomposed vegetable matter,- carbon or - -
A. No.
Q. Did you find in it iron stain, reddish streaks?
A. Well, there is a reddish tinge to very much of that soil; it has a yellowish or reddish color which might be caused by iron.
Q. Did you find that near the margin of the stratification, the edge of it?
A. Well, I did not find the edge of the stratification; I simply perforated it and went down through it.
Q. Did you observe that, for the purpose of looking at its density, did you observe it, as to whether it appeared to be

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the part of a fold, or the part of a rim, or did you merely look at it to see whether it was hard or not? Now which was it?
A. My principal and prime object was to ascertain if it was impervious.
Q. Without respect to whether it was continuous?
A. Well, the appearance at the point I perforated into the material was that it had extent; in other words, it disappeared beyond my vision, and so long as I did not get into a pocket of pebbles that were quite porous it answered my purposes.
Q. And as far as you did excavate there,- you made out quite a chamber didn't you?
A. Yes, sir.
Q. And as far as you did excavate there, except the one place where you went down beneath the level of the tunnel, you found the thing was continuous?
A. Well, it varied; it was not what you would call a homogeneous material throughout; it was irregular; we would have a few inches that would be very much finer than the few inches above it; and then there was a few inches that showed more or less quartz sand.
Q. It was not absolutely uniform?
A. Not by any means.
Q. You did not find that you were working in a big kidney of that kind of stuff in there, isolated?
A. No, sir; if I found any kidney, I struck the edge of one, when I sank down below the tunnel; in fact, I was afraid that I had, and sealed that up with cement and did not go any deeper.

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Q. You made no exploration between that and the mouth of the tunnel, to see whether that material extended further down or not?

A. The first work I did was between the point of the construction of the bulkhead and the mouth of the tunnel.

Q. What did you find there?

A. Well, I found a pocket of gravel, a kidney of sand and gravel, which would not be an impermeable mass.

Q. How far down the tunnel, or down toward the mouth of the tunnel was that?

A. I think it was less than 200 feet.

Q. Up stream in the tunnel did you make any investigation?

A. I did no further investigating, other than to go down in a number of shafts, and see if I could find what the material was; the shafts were down by the line of pipe, and I could not get the information.

Q. It was impossible to do so?

A. Yes, sir.

Q. You don't know what there is up the tunnel from the bulkhead, as to whether that is a continuation of this same material, or whether it is more open or more dense?

A. I had no opportunity to investigate under the ground about those points.

Q. Will you please locate the bulkhead on the map, plaintiff's Exhibit 1, as nearly as you may be able to do it, from the surrounding objects?

A. When I am in Los Angeles, next time, I could get the distances, and locate it accurately, which would be better.

Q. Yes. We could like to get it on this diagram.

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A. I think I have the accurate data in my office.

MR. HASKELL Q. This inclined formation of the material, in which you placed the bulkhead, was it or was it not such an inclination as might be characteristic of a fold of the earth?

A. It would be impossible to determine that from a geological standpoint, for the reason that the area which we had opportunity to observe was so limited that we could not draw a conclusion.

Q. In this shaft on the south side of where you placed the bulkhead, did you enter the shaft personally yourself?

A. Yes, sir.

Q. How wide an excavation at the foot of that shaft did you make?

A. I don't know the latter part; I don't know what was done before abandoning that work, but I presume five or six feet crossing the tunnel; we followed down a shaft that had been used during the construction of the tunnel.

Q. Did you notice any inclination there, or was it wide enough to really observe it?

A. Well, I think that feature of it was eliminated by the refill that was made around an old pipe; we went down that old pipe, and down the shaft, and we ascertained that there was gravel there, and it was porous, and we quit.

Q. You have been in other portions of the red hill, and in other hills east of the red hill?

A. I have been over it.

Q. Have you ever noticed any other inclination similar to that which you found in the shaft where you placed the

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bulkhead?

A. Well, there are similar points in the wash known as the Cucamonga was, where there is some evidence of material having been concentrated and separated, and laid down somewhat regularly.

Q. Have you found any in the Cucamonga Springs wash or on its branches?

A. Well, the point I had in mind, was south of the Base Line in the Cucamonga wash.

Q. In the Cucamonga Springs wash?

A. Yes, sir; in the flood channel that passes down through the Cucamonga Springs.

Q. Just east of the red hill?

A. On the east side of the red hill, and on the west side of the wash.

Q. How far from the Base Line?

A. A few hundred feet.

Q. And isn't that formation exposed for a depth of 10 to 20 feet?

A. Well, it is exposed for at least I should say ten feet.

Q. In depth?

A. I should judge so; something like that.

Q. And for a length of 40 or 50 feet or more?

A. Well, I couldn't say about that; it may be even longer than that.

Q. It is much longer than it is deep isn't it?

A. I am inclined to think there is some erosion there for several hundred feet, but just how continuous that stratification is I am not sure.

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Q. Now, I understood you to say that the zanjero of the Cucamonga Water Company had opened the gate of the bulkhead, during the present month: Was I correct in that?
A. That is my judgment; yes, sir.
Q. Were you present when he opened it?
A. I didn't see him open it.
Q. How do you know he opened it?
A. Well, I drew it from inference; that the San Antonio Water Company's - -
Q. It is merely an inference or conclusion of yours?
A. Presumably so; I understand that they needed the water; I was told that, and that they took it.
Q. But you don't know as an actual fact that he did it?
A. I didn't see the gate opened; I simply know there has been more water let through the gate; I know the fact of the water having been let out; and my information, which probably is on a hearsay basis, is to the effect that they did it.
Q. As a matter of fact you don't know personally who did it?
A. I didn't see the gate opened; I have not seen the gate since it was installed.
THE COURT, Q. In answer to Mr. Waters' question, speaking of the cross section of the tunnel where you put in the bulkhead, you spoke of the dip there, but you did not state what the angle was?
A. No, I did not state, and I don't know; it was not a large dip; it was a ligh dip; it was impossible- the delineation of the contact between the different kinds of layers was so indefinite, it was impossible to determine the degree of the dip; but it was not but a few degrees; if we could have had a

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strip of a hundred feet, we could have had a g od idea of it; but it was only six or eight feet we had to work in and it was impossible to do that.

Q. Are we to understand that in so much of the tunnel as you were able to see, that there was practically no rock in place, no solid formation?

A. There was no rock in place as we would regard that from a geological point; there was no permanent rock; there was a very compact solica, which for our purposes was just as good as granite.

Q. So far as you observed the tunnel was in earth and not in rock?

A. It was in earth; although Mr. Stowell, who seems to have had the largest information, has often represented that he passed through sandstone, and I presume many people would classify part of the silt which I have described here as sand stone.

Q. By reason of its firmness?

A. By reason of its firmness.

Q. Well, that sandstone formation is really more pervious than this silt?

A. Very much more so; this contained too much clay for determining it as sand stone.

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S. G. COUSINS.

S. G. Cousins, a witness called by Intervenor, being first duly sworn, testified as follows:

MR. HASKELL, Q. How old are you?

A. Thirty-six.

Q. Where do you reside?

A. Cucamonga.

Q. How long have you resided there?

A. Since November, 1901.

Q. What is your occupation?

A. Fruit growing, farming, surveying.

Q. Have you ever studied civil engineering?

A. I have studied mechanical engineering, and in connection with that a certain amount of civil engineering.

Q. Have you ever made any measurements of the depth of water of and in the wells, in and about the Cucamonga Springs?

A. Yes, sir.

Q. On the Cucamonga Rancho?

A. Yes, sir.

Q. Did you keep a memorandum of the measurements that you took

A. Yes, sir.

Q. Did you take the measurement of the flow of the water from the tinnel, the Eady tunnel, at any time?

A. Yes, sir.

Q. Did you keep a memorandum of those measurements?

A. Yes, sir.

Q. Have you carried the measurements which you took of the depth of water on to this profile map, now placed on this board?

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board?
A. Yes, sir.
Q. Of what wells did you take the measurement of the xxxtx depth of water?
A. wells 1, 2, 3, 4, 5, and 6; the Haskell wells 1 and 2, and the well No. 14, according to Mr. Wright's notation.
MR. CHAPMAN: That is the well in the tunnel?
Q. Well, No. 14, according to your notation, is the well at the head of the Eady tunnel is it not?
A. Yes, sir.
Q. I see marked on here W wellman well, what well is that?
A. That is the western well at the end of the Y tunnel.
Q. Did you take measurements of that well?
A. Yes, sir.
Q. And I also see marked here on this map East Spring: what does that mean?
A. That is where the water is seeping out.
Q. Where?
A. Well, it is the place they call the springs.
Q. What Springs?
A. The Cucamonga Springs, and it is on the east bank of the wash.
Q. And east of the red hill?
A. And east of the red hill.
Q. And do you mean that that is the highest point where begins to rise in that spring?
A. As I find it so; yes, sir.
Q. I see also marked here well No. 14: I believe you have already stated that that is the upper well of the Eadie tunnel?

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A. Yes, sir.

Q. Now, these wells marked 1, 2, 3, 4, 5, 6, and Haskell wells Nos. 1 and 2, are what have been referred to as the 16th Street wells, have they not?

A. Yes, sir; I believe so.

Q. Now, you may come to this map if you will. Well No. 5 is marked on this map as well No. 5 is it not?

A. Yes, sir.

Q. And underneath that I see the figures April 4th, 1907, March 19, 1907; February 9th, 1907; January 29th, 1907; December 23rd, 1906; April 10th, 1906: You may state what those characters mean, as marked under the words "Well No. 5" on this map?

A. It is the date that I took the several measurements, the different dates.

Q. I see from and along those date lines, lines prolonged to the right hand of the map, and I see on the other end of those lines, similar characters which you have just described as being at the left hand end of those lines: What do those represent?

A. The dates; they apply to the same lines; they are the dates of the measurements.

Q. I see at the right hand of the map the figures 1350, 1325, 1300, 1275, and 1250: What do those represent?

A. The elevation of the horizontal line that they are marked opposite, above sea-level.

Q. On the left margin of the map I see the figures, 1375, 1362 1/2, 1350, 1337 1/2, 1325, 1312 1/2, 1300, 1287 1/2, 1275, 1262 1/2, and 1250: What do those figures represent?

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A. The same as the figures on the other side.
Q. Well, what are they?
A. The number of feet above sealevel at this horizontal line .
Q. Upon which those figures are written?
A. Yes, sir.
Q. Now, I see perpendicular lines of red marked across this map: What are those lines?
A. They do not represent anything much.
Q. Upon what scale was this map drawn?
A. The horizontal scale is marked here.
Q. As shown by the figures on the right hand, and on the left margin of the map?
A. Yes, sir; I meant to say the vertical scale.
Q. And what represents the distance?
A. I didn't intend to represent any distance at all.
THE COURT: It is just a matter of convenience?
A. Yes, sir.
MR. BRITT: He means he did not intend to represent any horizontal distance?
A. Yes, sir.
MR. HASKELL, Q. Did you mean to represent vertical distances?
A. yes, sir; as the figures show.
Q. And this map simply shows vertical distances, perpendicularly?
A. Accurately; yes, sir.
Q. And horizontally only approximately?
A. Yes, sir.
Q. Now, referring to your memoranda or to this map, at the lower line I see April 10th, 1906, referring to this line

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marked April 10th, 1906,- what was the depth to water in well No. 5, as shown on that map at that date?

A. 1241.25.

MR. CHAPMAN: He don't mean that.

MR. HASKELL: I will withdraw that question.

Q. What was the water level above sea level in that well, on that date?

A. As I have it, 1345.36.

Q. On the next line above, marked December 23, 1906, what was the height of water above sea level in that well on that date?

A. 1348.36.

THE COURT: Let me make the suggestion that he has all that on this other map to which he seems to be referring, and you had better introduce that.

Q. Now, you have in your hand another map, do you not?

A. Yes, sir.

Q. What region of territory does this map represent? The region about the Cucamonga Springs and the Red Hill?

A. Yes, sir.

Q. And on this map have you also shown wells Nos. 1, 2, 3, 4, 5, and the wells which you have referred to as being on the profile, which you have already been testifying to?

A. Yes, sir.

Q. And on this latter map, is the height of water above sealevel shown on that map?

A. Yes, sir.

Q. And is it written out there?

A. Yes, sir.

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Q. Now, in well No. 1, you may tell us what is shown in relation to well No. 1, about the height of water above sealevel, giving the date of the measurement?
A. On May 10th, 1907, the elevation of the water was 1375.93; On may 20th, 1907, the elevation was 1377.18.
Q. Now, in regard to well No. 2 what is shown?
A. On May 10th, 1907, the elevation was 1370.60; On May 20th 1907, the elevation was 1370.86.
Q. Well No. 3?
A. On May 10th, 1907, the elevation was 1368.25.
Q. Well No. 4?
A. On May 10th, 1907, the elevation was 1367.47.
MR. CHAPMAN, Q. Have you the elevation of a later date at well No. 3?
A. I think I have.
MR. HASKELL, Q. Will you look and see.
A. Yes, sir: May 20th, 1907, it was 1369.25.
Q. Now, give us the elevations of water at well No. 4, at the different dates at which you took measurements?
A. May 10th, 1907, 1367.47. May 20th, 1907, 1367.47.
Q. Well No. 5?
A. May 10th, 1907, that was 1367.87; May 20th, 1907, 1367.87.
Q. In all of the elevations of water given here, did you take all of those elevations personally yourself?
A. Yes, sir. December 23rd, 1906, 1350.37. January 29th, 1907, 1351.87; February 9th, 1907, 1353.87. March 19th, 1907, 1358.87; April 4th, 1907, 1362.37.
Q. Those last were all on the same well?
A. Yes, sir.

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Q. On what well?

A. No 5. On April 10th, 1906, 1546.3.

Q. Now, on well No. 6 you may give the measurements?

A. May 10th, 1907, 1365.11. May 20th, 1907, 1365.36.

Q. Now, on the Haskell well, which well did you measure?

A. The one that I have here marked No. 2.

Q. Is that the most western well?

A. Yes, sir.

Q. You may give the height of water in those wells at the different dates?

A. April 10th, 1906, 1545.36. December 23rd, 1906, 1548.36. January 29th, 1907, 1549.86. February 9th, 1907, 1551.36. March 19th, 1907, 1558.36. April 4th, 1907, 1558.36. May 10th, 1907, 1562.86. May 20th, 1907, 1563.36.

Q Now, what well is this?

A. The West Hellman well.

Q. You may give the measurements of the elevation that you took on that well at different dates?

A. April 10th, 1906, 1544.50. December 23rd, 1906, 1546.5. January 29, 1907, 1547.5 February 9, 1907, 1549.00 March 19, 1907, 1555. April 4th, 1907, 1555. May 10th, 1907, 1559. May 20, 1907, 1559.75.

Q. What well is this?

A. I don't know what that is; they call it the China well.

Q. Where is that located?

A. Westerly and a little southerly of the west Hellman well

Q. And east of the tunnel Cucamonga Springs?

A. Yes, sir.

Q. Did you take the elevation in that well at all?

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A. On April 10th, 1906, I took the elevation, 1[illegible].

Q. Did you at any time take the elevation of the water in well No. 14, or the most northerly well of the Eady tunnel?

A. Yes, sir.

Q. You may give the elevations of the water as taken by you in that well?

A. On April 10th, 1906, 1293.94. December 23, 1906, 1295.94 January 29th, 1907, 1306.94. February 9th, 1907, 1322.44 March 19, 1907, 1336.94. April 4th, 1907, 1339.94. May 10th, 1907, 1332.94. May 20th, 1907, 1321.69.

-o-

Here the Court takes a recess until tomorrow, May 23rd, 1907, at ten o'clock A.M.

-o-

OFFICIAL REPORTER, SUPERIOR COURT.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Company, et al.,

Plaintiff

vs.

San Antonio Water Company,

Defendant

VOLUME VII.

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I. BENJAMIN, Official Reporter

May 23, 1907. Seventh Day.

S. G. COUSINS.

Direct Examination. (Resumed.)

Mr. Haskell: Q. In your testimony yesterday you first referred to this map which is now on the board, which is a profile map, did you not?

A. Yes, sir.

Q. Now in our reference hereafter to this map we will refer to it as Intervenors' Exhibit No. 1. You also referred to a map which I now have in my hand, did you not?

A. Yes, sir.

Q. Upon which are marked certain measurements of wells of which you testified yesterday. Is that correct?

A. Yes, sir.

Q. Hereafter we will refer to this map as Intervenors' Exhibit No. 2. Did you at any time take the elevation of the water above sea level in the Lone Star well no. 6 and marked on Intervenors' exhibit no. 2?

A. Yes, sir.

Q. You may state what you found the elevation of the water to be, giving the date.

A. On April 5, 1906, the elevation of the water was 1345.82 feet.

Q. Did you take a similar measurement of well no. 5, Lone Star?

A. Yes, sir.

Q. What did you find that to be?

A. On April 10, 1906, the elevation was 1308.8.

Q. Of well no. 4, Lone Star, did you take a measurement?

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A. No, sir.

Q. Of Well E, Lone Star, did you take a measurement?

A. Yes, sir.

Q. Wat was that ?

A. 1508.8 on April 10, 1906.

Q. Did you take any elevation of the first rising water on the northerly extremity of theCucamonga Springs at any time, above sea level?

A. Yes, sir; at a point where I found the water seeping up at its highest level-- seeping out at its highest level in the creek bed.

Q. What did you find there?

A. On April 10, 1906, the elevation at that point was 1332 feet.

Q. Did you take any other measurement of rising water at the highest elevation of the creek bed in the Cucamonga Springs?

A. On May 10, 1907, the elevation was 1338.9 feet.

Q. Are those points marked on Intervenors' Exhibit no. 2?

A. Yes, sir.

Q. How is the measurement that you made in 1906 marked on that map?

A. It is marked "Seepage water, April 10, 1906; elevation 1332."

Q. And how is the second measurement marked on that map?

A. It is marked "May 10, 1907; seepage 1338.9 feet."

Q. Are those words and figures written at the right hand side of thepoint of measurement?

A. Yes, sir.

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Q Is well number 6, Lone Star, marked on this intervenor's exhibit number 2? If so, how?

A. It is marked "Well number 6 pump".

Q. And what represents the well itself?

A. A little circle.

Q. And is Star well number 5 represented on the same map, and , if so, how?

A. By "Well number 5, tunnel flow".

Q. And the well itself is marked how?

A. With a little circle.

Q. Is well E, Lone Star, marked on that map?

A. Yes.

Q. How?

A. By "Well E".

Q. And what represents the well itself?

A. A small circle.

Q. Did you take any elevations of well number 1, 90 acre tract, as represented on intervenor's exhibit number 2?

A. Yes, sir.

Q. How is that well marked on intervenor's exhibit number 2?

A. As well number 1, and indicated by a small circle.

Q. And what measurement did you take of that well as to the height of water above sea level?

A. On April 10, 1906, the elevation was 1533 feet.

MR. CHAPMAN. Q. Where is that well number 1 that you are now referring to.

A. It is up to the hill.

Q. And in what portion of the 90 acre tract is that situated?

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A. In the northeastern portion-- the northeastern corner.

Q. How is the 90 acre tract designated on intervenor's exhibiti number 2?

A. It is marked "90.14 acres, Cucamonga Water Company 90 acres".

Q. And the Eady tunnel is marked on that map, also, is it, and passing through the 90 acre tract?

A. Yes, sir.

Q And how is that marked?

A. Tunnel number 2.

Q. Did you take any measurement of the eleveations of water of well number 14 at the head of the Eady tunnel or tunnel number 2?

A. Yes, sir.

Q. I believe you testified in regard to those yesterday did you not?

A. I think so.

Q. And those measurements as you testified to them yesterday are written on intervenor's exhibit number 2 at the right hand of well number 14, are they not?

A. Yes, sir.

Q. Did you take any measurements of the wells of the Cucamonga Water Company on the 90 acre tract as to the elevation of water above sea level?

A. Yes, sir.

Q. What wells?

A. Well marked number 1.

Q. Of which you have already testified?

A. Yes, sir. And the two wells which flow into this

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nel.

tunnel.

Q. You may give the measurements of the elevations of the water of those wells above sea level ?

A. It is 1291.9 on April 10, 1906.

Q. Do you know whether or not that elevation is the actual elevation of the well at the tunnel?

A. I think it is, very nearly.

Q. How is that well marked on intervenor's exhibit number 2?

A. Marked two wells, tunnel flow, indicated by two little circles close together.

Q. And that is also within the 90 acre tract as marked on this map, is it not?

A. Yes, sir.

Q. Is there any other well the Cucamonga Water Company on that tract of which you took any measurement?

A. No, sir.

Q. Now on this 90 acre tract there is a bulkhead, isn't there, in that tunnel?

A. Yes, sir.

Q. You have been to it haven't you?

A. Yes, sir.

Q. Do you know where it is located approximately with reference to the mouth of the tunnel? Where is the mouth of the tunnel as marked on this map ?

A. It is near the section line between sections 4and 9 and near the southeast corner of the 90 acre tract of the Cucamonga Water Company.

Q. How far from the mouth of that tunnel would you say that this bulkhead is, approximately?

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A. About a third of the way up, a

Q. And a third of the way up would be about how many feet?

A. I don't know.

Q. You mean a third of the way up on the 90 acre tract?

A. A third in that tunnel.

Q. On what scale is this map drawn?

A. 500 feet to the inch.

Q. And you know it is drawn correctly on that scale?

A. Yes, sir.

Q. Do you know whether or not these wells are correctly located on this map?

A. Yes, sir.

Q. Do you know whether or not the tunnel is correctly located-- tunnel number 2 or Eady tunnel-- is correctly located on the map?

A. Yes, sir; I think it is.

Q. Going back to that former question, are the wells correctly located on this map?

A. I think they are.

Q. According to the scale a, are they correctlylocated?

A. I couldn't say as to that exactly.

Q. Are they approximately correct?

A. Yes, sir; they are.

Q. Now you have designated the well hereon this map apparently at the head of the Eady tunnel as well number 14, have you not?

A. Yes, sir.

Q. You havetaken the measurement of depth of water in that well at various times above sea level?

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A. Yes, sir.

Q. You may give those elevations and dates of measurement.

A. On April 10, 1906, the elevation was 1293.94 feet: On December 23, 1906, the elevation was 1293.94 feet: On January 29, 1907, the elevation was 1306.94 feet; On February 9, 1907, the elevation was 1322.44 feet; March 19, 1907, the elevation was 1336.94 feet. On May 10, 1907, the elevation was 1332.94 feet. On May 20, 1907, the elevation was 1321.69 feet.

Q. Do you know when that bulkhead was closed-- on what day was it closed?

A. I understood it was closed--

Q. Do you know?

A. I know it was closed on January 29.

MR. CHAPMAN. Q. 1907?

A. 1907.

Q. Do you know that that bulkhead has since been opened?

A. Yes, sir.

Q. On what day of your own knowledge, without hearsay, do you know that it was open?

A. On May 10, 1907.

Q. How do you know it was open on that date?

A. Because I was at the mouth of the tunnel and heard the water running over the weirs.

Q. Between the time of the first measurement, which is on April 10-- between January 29, 1907, and April 4, 1907, what was the total rise of the waterin well number 14 at the head of the Eady tunnel? Between January 29 and April 4?

A. It was 33 feet.

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Q. And what was the difference in elevation between April 10, 1906, and April 4, 1907?

A. 46 feet.

Q. What is the difference in elevation between December 23rd, 1906 and April 4, 1907?

A. 46 feet.

Q. On intervenor's exhibit number 2 I see a space between two parallel lines on which are marked "San Bernardino Base Line". What does that represent?

A. The space between the two parallel lines is the San Bernardino Base Line road, and the Base Line itself runs in the center of the road.

Q. And how is Hellman avenue marked ?

A. By two parallel lines running north and south marked Hellman Avenue.

Q. Is the storm channel of Cucamonga creek shown on this exhibit? If so, how?

A. Yes; approximately; by a series of dots.

Q. Passing through what section?

A. Section 4.

Q. From north of Base Line in a southeasterly direction?

A. Yes, sir.

Q. On this map at the lefthand margin I see at the ends of certain curved and waving lines extending through the map or across it or in it, the figures 1450, 1294-- no, 1450, 1420, 1350, 1300 and 1250: what do those figures represent?

A. It represents the height above sea level of the ground, following those lines which they stand opposite.

Q. And on the righthand margin of the map I see the figures

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1450, 1390, 1350, 1300 and 1250. What do those figures represent?

A. They represent the height of the ground following the along the lines which they stand opposite to above sea level.

Q. From what did you compile this map in reference to those lines?

A. They were taken from a map and reduced to conform with the scale of this map. It is an early edition of map plaintiffs' Exhibit 1.

Q. Have you ~~a~~ run any actual survey to determine the elevation of the ground and the elevation of the water yourself over any of this ground?

A. Yes, sir.

Q. In order to do that you had to assume a certain datum plane, did you not?

A. Yes, sir.

Q. What datum plane did you assume?

A. The surface of the ground at the intersection of Hellman avenue and San Bernardino road or San Bernardino Base Line.

Q. Is that marked on exhibit number 2?

A. Yes, sir.

Q. How?

A. By a small circle marked Gas Pipe, elevation 1377.

Q. You assumed then that the elevation above sea level at that point at the surface of the ground was 1377 feet.

A. Yes, sir.

Q. From that point in what direction did you run?

A. Westerly.

Q. To what point?

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A. To point marked Well E.

Q. In the Lone Star system?

A. Yes, sir.

Q. From that point where did you run?

A. To a point nea Base Line--

Q. Where is that point approximately?

A. Near the northeast corner of section 4.

Q. From that point where did you run?

A. I ran northerly to well number 6, Lone Star well.

Q. From there where did you run? Or did you begin at some other point? You can refer to your notes if you desire?

A. I ran from well number 6-- Lone Star well number 6-- westerly to the Haskell wells numbers 1 and 2 .

Q. Then where did you go?

A. And thence to well number 6: San Antonio Water Company's well number 6.

Q. Marked on this exhibit as being north of Base Line?

A. Yes, sir.

Q. Then where did you go?

A. To well number 5.

Q Keep right on?

A. Thence to well number 14.

Q. Number 14 at the head of the Eady tunnel?

A. Yes, sir; thence to the Cucamonga Water Company's two wells in the northwest corner of the 90 acre tract.

Q. Did you run at all to well number 1 in the northeast corner of the 90 acre tract?

A. Yes, sir; I ran thence to well number 1 in the northeast corner of the 90 acre tract.

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Q. Did you run any lines from any point to the point where you have testified you found seepage water or rising water in the wash of Cucamonga Springs?

A. Yes, sir.

Q. From where did you run that?

A. The first level I ran from the west Hellman well marked "W. Hellman Well", in a southerly direction to the wash, and thence down the wash till I found the water. I think I ran from this point, the west Hellman well, and ran north.

Q. Where is that point?

A. It is located near the corner of section 4 at a rock.

Q. You ran from that rock where?

A. To the west Hellman well.

Q. Thence in what direction?

A. Thence in a southerly direction to the wash, and thence down the wash to the first water that I came to.

Q. Did you at any time run a line to wells numbers 1, 2, 3 and 4 of the San Antonio Water Company's wells north of Base Line?

A. Yes, sir.

Q. From what point did you run that?

A. I commenced at well number 1; thence easterly to well number 2; thence easterly to well number 3; thence easterly to well number 4; thence easterly to well number 5.

Q. Now, in running these lines you first obtained a surface elevation, did you?

A. Yes, sir.

Q. And you used some bench mark at each of these wells, did you?

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A. Yes, sir.

Q. What bench mark did you use at well number 1?

A. The top of the curb.

Q. At number 2?

A. The top of the curbing.

Q. Number 3?

A. The top of the curbing?

Q. Number 4?

A. The top of the curbing.

Q. Number 5?

A. The same; the top of the curbing.

Q. Number 6?

A. The top of the curbing.

Q. On the Haskell wells which you have marked on this exhibit as number 1 and number 2, Haskell wells, what bench mark did you use there?

A. The top of the curb.

Q. On May 10, 1906 you may tell us the depth of the water from the top of your bench mark to the water level as you found it in well number 1 of the San Antonio Water Company north of the Base Line?

A. Well number 1, on May 10, 1907, I found the water to be at a depth of 116 1/2 feet from the top of the curbing.

Q. The top of the curbing was about what height above the actual level of the ground?

A. I should say about 2 feet.

Q. What did you find the depth of the water from the top of your bench mark to be on that date in well number 2 of the San Antonio Water Company north of the Base Line?

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A. On May 10, 1907, the water measured 116-1/4 feet down from the top of the curbing.

Q. And what was a similar measurement on well no. 3 on that date?

A. The same date it was 115 feet from the top of the curbing.

Q. And well no. 4?

A. On the same date it was 115 feet from the top of the curbing.

Q. And well no. 5?

A. On the same date it was 133 feet from the top of the curbing.

Q. On well no. 5?

A. On the same date it was 133 feet from the top of the curbing.

Q. On well no. 6?

A. On May 10, 1907,-- the same date,-- the water was 95-1/2 feet down from the top of the curbing.

Q. How was it in the Haskell well? Which of these wells did you measure? Both or only one?

A. Only one of them; the southernmost well.

Q. And the westerly well?

A. Yes, sir; the westerly well.

Q. What did you find that to be?

A. On May 10, 1907, the water stood 99 feet down from the top of the curb.

Q. On the west Hellman well, what was the similar measurement on that date?

A. On May 10, 1907, I found it to be 52 feet down from the

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top of the post.

Q. How did that post set in reference to the top of the ground?

A. Pretty near.

Q. Pretty near how?

A. The top of the post was pretty nearly level with the top of the ground.

Q. What was the elevation on May 10, 1907? What was the distance from the surface of the ground or from your bench-mark in well no. 14 to water on May 10, 1907-- the well at the head of the Eady tunnel?

A. On that day the depth to water was 74 feet below the top of the curbing.

Mr. Haskell: I will offer Intervenors' exhibit no. 2 as a diagram illustrating the testimony of this witness.

The Court. Any objection?

Mr. Gregg: No objection.

The Court. It will be admitted.

Q. Now referring again to this profile known as Intervenors' exhibit no. 1, I will ask you how if in any manner the elevation above sea level is represented on this profile map? By what spaces, if any? By the red parallel lines drawn from the left hand to the right hand of the map?

A. Yes, sir.

Q. I see in the spaces here finer red lines so drawn from the left hand to the right hand between the heavier and darker larger red lines: What do those finer red lines represent as to height or distance?

A. The distance between the finer red lines represents a

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vertical distance of half a foot.

Q. Six inches?

A. Yes, sir.

Q. As I understand you, this map is not drawn-- this profile is not drawn upon a scale from the left hand to the right hand of the profile?

A. No, sir.

Q. But it is drawn to a scale from the top to the bottom of the profile, is it?

A. Yes, sir.

Q. And represented in the manner of which you speak?

A. Yes, sir.

Q. Well no. 1 as marked on the upper left hand corner of Intervenors' exhibit no. 2-- Well No. 1 as marked on top of this map corresponds, does it not, to well no. 1 at the upper left hand corner of Intervenors Exhibit no. 2?

A. Yes, sir.

Q. And it is one of the wells that belongs to the San Antonio Water Company above Base Line, is it not?

A. Yes, sir.

Q. And the same is true, relatively, as to well no. 2, well no. 3, well no. 4, well no. 5, well no. 6, Haskell wells 1 and 2, marked at the top of Intervenors' exhibit no. 1, is it not?

A. Yes, sir.

Q. Those are shown upon exhibit no. 1, are they not?

A. Yes, sir.

Q. Now, I see the top line, for instance, passing from well no. 1 at the upper left hand corner of Intervenors' exhibit

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no. 1,-- from the upper left hand corner of profile over to the right hand margin of the profile: What does that line represent? For instance, what does it represent at well no. 1-- the starting point?

A. The starting point or well no. 1, at either of these two lines--

Q. Take the upper line.

A. Is the elevation of the water at that point on that date.

Q. At what date?

A. May 20, 1907.

Q. Underneath the line marked May 20th, 1907 on profile no. 1, or Intervenors' exhibit 1, I see another line just below it, marked May 10, 1907: What does that represent at well no. 1?

A. It represents at well no. 1 the point at which the water stood above sea level on May 10, 1907

Q. I notice that these two lines converge, or nearly so, at well no. 2. Is that true?

A. Yes, sir.

Q. Do they converge or is there a slight difference between them?

A. There is a little difference.

Q. But they do converge at well no. 3?

A. Yes, sir.

Q. Why do they converge at that point?

A. Because the vertical measurements on these two days at well no. 3 corresponded or were the same.

Q. Did they correspond on well no. 2?

A. No, sir.

Q. What was the difference?

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A. 0.25 of a foot.

Q. Now, that line marked at the l ft hand corner "May 20, 1907": and May 10, 1907" which converges at well no. 3 and is prolonged to the right hand side of the map, represents what at the various points where the wells are marked on this map?

A. They represent between any--

Q. Not between, but at the points where wells are marked on the map.

A. They represent the hight of the wter above sea-level at the different points.

Q. On those two dates given at the left hand side of the map ?

A. Yes, sir.

Q. Where does that line that starts at the left hand side of the map-- how is it marked on the right hand side?

A. The one that is marked May 10, 1907, on the left hand side, is also marked the same on the right hand side.

Q. I see at the upper right hand corner of this profile map the words "well no. 14": What well is that supposed to represent?

A. It represents the well marked well no. 14.

Q. On Intervenors' exhibit no. 2?

A. Yes, sir.

Q. At the head of the Eady tunnel?

A. Yes, sir.

Q. And at the right hand side of the map, the upper line, I see marked April 4, 1907: What does that represent at well no. 14-- when it strikes well no. 14?

A. It represents at well no. 14 the elevation of the water

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above sea level on April 4, 1907.

Q. And I notice on that upper line, a little to the left or a short distance from the right hand margin of this pro ile, the words "E Spring". What does that designate on this profile?

A. That designates the point at which I took the level of and designated on map no. 2 of intervenors as seepage water on May 10, 1907.

Q. That is in the wash of Cucamonga Springs?

A. Yes, sir.

Q. I see that the upper line represents-- Did you take that measurement at that point April 4?

A. Not on that dark black line, but at the two points marked and dated May 10, 1907, and April 10, 1906.

Q. Then as a matter of fact the corresponding elevation of the water at the springs or rising water in the wash of Cucamonga Springs is shown by the lighter red line with a dot at its end on the left marked "E Spring" on this profile and Intervenors exhibit no. 1" and also by the words May 10, 1907, which is the true point at which that water was on May 10, 1907?

A. Yes, sir.

Q. And then the lighter red line terminating in the round dot and marked April 10, 1906, is the point where you found the rising water in the Cucamonga Springs wash on April 10, 1906, is it not?

A. Yes, sir.

Q. And those two points you have already testified to as being marked and ~~dated~~ designated on intervenors' exhibit

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no. 2, have you not?

A. Yes, sir.

A. Now here is a line somewhat to the right of the left hand margin of this profile map, at the beginning of which is marked April 4, 1907, and that line is prolonged to the right hand margin of that?

A. Yes, sir.

Q. What does that represent? What does it represent at the beginning point?

A. It represents at the beginning point the hight of the water in well no. 5 above sea level. on April 4, 1907.

Q. What does the next line beneath it represent? Marked Mar 19, 1907.? A. It represents the hight of the water in well no. 5.

Q. Above sea level on March 19, 1907? A. Yes, sir.

Q. The next line, marked Feb. 9, '07: What does that represent as to its beginning point on the left hand side?

A. The hight of the water of well no. 5 above sea level on February 9, 1907.

Q. And the next line below?

A. The same on January 29, 1907.

Q. And the next line below?

A. The same on December 25, 1906.

Q. Those lines are projected through the perpendicular lines marked well no. 6, Haskell well no. 1, and 2, West Hellman well, E. Spring, to the point at the right hand margin of the map, marked at the top well no. 14: Now as those lines pass through each of those wells, what does it represent?

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A. It represents the hight of water above sea level at those points.

Q. But that is not true of the spring itself, is it?

A. No, sir.

Q. But the hight of water at the Spring itself is shown by the two lighter lines of which you have already testified?

A. Yes, sir.

Q. Now in order to get the projection of those lines through certain wells as to the angles of projection you would have to examine intervenors' exhibit no. 2, would you not?

A. Yes, sir.

Q. As to the true direction? That line does begin, however, at well no. 1, does it not, of the San Antonio Water Company's wells north of the base line?

A. Yes, sir.

Q. And is projected in an easterly direction until it reaches Haskell well no. 1 and 2? From thence it is projected in a southeasterly direction to the West Holbman well, is it not, as marked on Intervenors' exhibit no. 2? And from that point it is projected to well no. 14 at the head of the Eady tunnel, is it not?

A. Yes, sir.

Q. And in reference to those various points it shows relatively the hight of the water above sea level as you have already testified?

A. Yes, sir.

Q. I don't believe you know, as a matter of fact, what the hight of the water was in feet between those wells, do you?

A. No, sir.

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Q. But by this examination you do know that at those various points the water was found in a descending line along the lines of which you have testified?

A. Yes, sir.

Q. And the lowest ppint was at well no. 14?

A. Yes, sir.

Mr. Haskell: I will now offer Intervenors' Exhibit No. 1 as illustrating the witness' testimony.

The Court: It will be admitted.

Cross Examination.

Mr. Chapman: Q. What was your object in making these measurements, Mr. Cousins?

A. I was hired to do so.

Q. By whom?

A. Mr. Haskell and his clients.

Q. You were in their employ when these measurements were made?

A. Yes, sir.

Q. Was the work done under their direction?

A. No, sir; not entirely.

Q. Under whose direction was it done?

A. Mine, mostly.

Q. I wil ask you again, then, what was your object in making these measurements? What were you seeking to ascertain?

A. I presume the purposes of the measurements are to establish the condition of the water plane covering that section which the measurements cover.

Q. Did you know particularly what the theory of intervenors was in regard to this case before you took this observation?

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A. No, sir.

Q. They didn't tell you anything about that?

A. No, sir.

Q. Who selected the times when these measurements and observations were to be made?

A. Myself.

Q. At well no. 14 I observe that you made some six or seven different measurements, the dates of which are here given, and, I believe, begin with April 1906?

A. Yes, sir.

Q. Did you make no other observations upon these other wells but such as you have testified here?

A. Yes, sir.

Q. Will you give them to us?

A. On April, 10, 1906, I found the water to be 1302.12 feet above sea level at Cucamonga Water Company's well in what they call the 60-acre tract.

Mr. Haskell: Marked how?

A. With a small circle and the word "pump" above it.

Mr. Chapman: Q. And the date of that was April 10?

A. April 10, 1906.

Q. That was the date upon which one of the measurements at well no. 14 was made?

A. Yes, sir.

Q. Did you make a measurement upon this well which you have last referred to on a date corresponding with any of the other measurements on well no. 14?

A. No, sir.

Q. Are there any other measurements that you made that you

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have not testified to here?

A. On April 11, 1906, I found the water to be 1301.5 feet above sea level at the Sunset Water Company's oldest well, which is indicated by a small circle marked "pump" on the lands marked "Sunset Water Company's 30 acres.

Q. Are you in the employ of the Sunset Water Company?

A. Yes, sir.

Q. How long have you been in the employ of that company?

A. I would like to changethat a little bit. I am an officer in the company.

Q. What is your office?

A. Vice president.

Q. Who is the engineer of the company?

A. I direct it.

Q. And how long have you been engaged in that business and for that company?

A. I think about three years.

Q. Proceed now with any other measurements that you may have made and to which you have not testified in any wells shown on this map.

A. At the new well belonging to the Sunset Water Company, and indicated by a small circle marked "pump" on the Sunset Water Company's 30-acre tract, on April 11, 1906, I found the water to be 1303.04 feet above sea level.

Q. Any others?

A. At the Old Settlers' Water Company's well in the northerly portion of the 20-acre tract, marked "Old Settlers' Water Company 20-acres" and indicated by a small circle marked "pump", on April 12, 1906, I found the water to be 1294.8 feet

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above sea level.

Q. Did you observe what the conditions were about that well at the time you made that measurement in that vicinity? Were there any wells pumping in that vicinity at that time?

A. No, sir; there were not.

Q. The Sunset people at that time were not pumping?

A. No, sir.

Q. How long had it been since they had been pumping?

A. I think about four months.

Q. Were the old settlers pumping their well at that time?

A. No, sir.

Q. About howlong had it been since they were pumping?

A. I don't know.

Q. How far from the Sunset well to which you refer is it to the Old Settler's well?

A. I don't know.

Q. Approximately? Can you tell from your map?

A. About 2600 feet, I should say.

Q. Are there any other measurements made by you not yet testified to?

A. At a point on the northeast part of the Hermosa Water Company's 20-acre piece, indicated by a small circle marked "pump", on April 10, 1906, the water stood at 1351.08 feet above sea level.

Q. If there are any others, will you proceed to give them all without any further question?

A. At the Uplands Water Company's well, indicated by a small circle, on the tract of land marked "Upland Water Company" on April 10, 1906, the water stood at 1338.17 feet

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above sea level.

Q. Does that conclude them?

A. I think it does.

Q. I notice now on the string of wells-- the Sixteenth Street wells, at well no. 1, if I understand your marks here right, there were three measurements made.

A. No, sir; two.

Q. On what dates?

A. On May 10, 1907, and on May 20, 1907.

Q. And on well no. 2 there were also two?

A. Yes, sir; the same dates.

Q. On well no. 3 there were also two at the same dates?

A. Yes, sir.

Q. On well no. 4 it is the same?

A. Yes, sir.

Q. At well no. 5 I see you have a number of measurements.

A. Yes, sir.

Q. How many altogether?

A. Eight.

Q. And how many at well no. 14?

A. Eight.

Q. Are those measurements on those two wells-- do they represent measurements made on the same day at each?

A. Yes, sir.

Q. At well no. 6, there are only two measurements there, May 10 and 20 of 1907, I believe?

A. Yes, sir.

Q. At well no. 1 and 2 , Haskell wells, which one is it that you measured?

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A. No. 2.

Q. How many measurements did you make there?

A. Eight.

Q. On the same days that you made the measurements at well 14?

A. Yes, sir.

Q. On the other of those wells, how many measurements did you make?

A. The other well I made but one measurement.

Q. On what date was that?

A. I don't remember; I think it was the same day that I made the first measurement of the other well.

Q. April 10, 1906?

A. Yes, sir.

Q. There are a series of measurements here at another well. What well is that?

A. It is the West Hellman well, marked "W. Hellman well."

Q. On the northeast corner of section 4?

A. Yes, sir.

Q. How many measurements did you make there?

A. Eight.

Q. On the same days that you made the measurements at well 14?

A. Yes, sir.

Q. The Lone Star wells: How many of them are there in that system of wells?

A. I don't know.

Q. Is there anything here to mark that as the Lone Star tract or spring or wells?

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A. No, sir.

Q. Will you give a little description of it, so that the Reporter's notes will show whereabouts on this map you are lee ting them?

A. What is called the Lone Star tunnel comes into the Cucamonga Water Company's 35-acre tract at the southeast corner, and runs northwesterly across base line., and continuing on into the Cucamonga Water Company's land--

Q. Isn't well no. 6 marked there?

A. Well no. 6, as I have it marked.

Q. On what section is that?

A. Section 34.

Mr. Haskell: Q. How is the 35-acre tract of the Cucamonga Water Company marked on intervenors' exhibit no. 2?

A. As "C. W. Co. 35 A tract."

Mr. Chapman: Q. That means Cucamonga Water Company's?

A. Yes, sir.

Q. I see in the lands above there, in section 24, the words "Cucamonga Water"xx. What does that indicate?

A. Cucamonga Water Company 240 acresxxxx.

Q. What 240 acres is that?

A. That is their land, situated-- or a portion of the Cucamonga Homestead Association in section 34:.

Q. Altogether or partly in another section?

A. Partly in section 33.

Q. Why did you make the measurements on these wells to which I have called your attention on the eight several days in the years 1906 and '7? What was the point of making those measurements of these wells on those days?

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A. Merely to get the measurements.

Q. Why didn't you make the measurements on the same days as the other wells?

A. Some of them I couldn't get into and some of them-- This well was being pumped.

Q. What well?

A. No. 6.

Q. Pumped on each one of those days?

A. Yes, sir. And it was also the same condition as wells no. 2, 3 and 4.

Q. Were they all being pumped on each of those days?

A. No, sir; well no. 6 was at times in the same condition as 2, 3 and 4. I couldn't get into them.

Q. How was it with reference to the other wells which you have measured? Was there any difficulty in getting into them?

A. No, sir.

Q. Why didn't you make measurements on those days-- those same days-- of those wells?

A. You mean these--

Q. Yes; all through that section.

A. I considered them out of the territory.

Q. Out of what territory?

A. Which I was covering in my measurements.

Q. That conclusion would have been either confirmed or refuted if you had made those measurements, would it not?

A. I don't know.

Q. Or, at least, would have received some confirmation or the reverse?

Mr. Haskell: We object to that as calling for the expression

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of an opinion of the witness on which he was not examined on his examination in chief. This witness was not called as an expert to give any opinions whatever.

The Court: The objection is sustained. Defendant excepts.

Q. Were you employed as an expert?

A. No, sir; I don't think I was.

Q. What business had you to reach the conclusion that these wells were outside of the territory?

Mr. Haskell: We object to that for the same reason as before. It calls for the conclusion of the witness and an expert opinion.

Mr. Chapman: He has given the conclusion.

The Court: In what way?

Mr. Chapman: He says in answer to the question why he didn't make the measurements at these wells, that he didn't consider it at the time as the same, and that he thought it was not within the territory.

Mr. Haskell: That is on cross examination.

Mr. Chapman: What is the difference?

The Court: It makes the difference that you can't build a crossexamination on a crossexamination.

The objection is sustained. Defendant excepts.

Q. Did you have any directions from your employers what measurements yo make on these particular dates?

A. No, sir.

Q. That was all out of your own head?

A. Yes, sir.

Q. Coming down to this well on the northeast corner of the 90-acre tract-- which I believe is the Cucamonga Water Com-

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pany well no. 1, -- I obser e a dark line sweeping in something of a curve to the southerly and the easterly: What does that represent?

Mr. Haskell: We object to that because the witness was not examined as to that line.

The Court: But you offered that map in evidence, didn't you?

Mr. Haskell: We offered it as a diagram illustrative of his testimony, and it would only illustrate it as far as he testified in reference to it upon direct examination.

The Court: The objection is overruled. Intervenors except.

A. It is a contour line of the surface of the ground-- to take the elevation of the different points along and plot them.

Q. You are speaking of the contour line?

A. Yes, sir; at the surface of the ground. And after you have a sufficient number of points or enough of them, then you draw a line through the points, rounding the corners as they change direction, and you have an approximate definition of the outline of the ground at that particular level. Now, at the different points in the wells,-- if the wells are too much separated, by one not being able to take them at equal intervals or short intervals, by proceeding in the same manner and drawing a line somewhat rounded between the points of equal elevation, I arrived at the lines that I have drawn, the dotted portion following along as illustrating my idea of where they might go.

Q. Where it might go?

A. The points of equal elevation.

The Court: Q: I would like to know what that stands for.

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A. The hydrographic contour.

Q. Do you mean the plane of saturation?

A. No, sir; the hydrographic contour of the water plane at that particular ~~xxxxxxxx~~ level.

Mr. Chapman: Q. As I understand him, this line which I have called his attention to, is intended to mark the course where you would find the water plane of thesubterranean waters practically at the same elevation. Is that is? Or what does it mark, if not that?

A. It marks the line-- when you follow along the ground at a stated elevation on a level, as you meet hills etc. you have to go around them: And it is the same way with the water plane at a stated elevation, which is at different points in the map. By drawing the line through those different points, it represents somewhat the contour of the water plane at that particular level.

The Court: Q. I asked you a moment ago if that line represented the elevation of the water plane at those particular points, and you said no.

A. Yes, sir; the different points along the line.

The Court: I think you have offered your witness as something of an expert, Mr. Haskell.

Mr. Haskell: No, I did not.

The Court: You offered this map as part of his evidence.

Mr. Britt: I don't think the witness said anything about his view on direct examination of what was meant by the lines, and he says now it is a surmise.

Mr. Chapman: But he made them.

The Court: You offered the map as part of his evidence.

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If you offered it under a misapprehension, the sooner you correct it the better, because I should consider myself at liberty to consider the data on the map.

Mr. Chapman: I am asking an explanation of what was intended to be represented on the map, without regard to whether it is correct or not. And as I understand him now, that line is drawn as his judgment touching the water level at this point on the western side. That point a little below on the east side would mean that the water stood about the same level at those points?

A. Yes, sir.

The Court: Q. What do the dotted lines mean where you have ceased to have a solid line, but have a dotted line?

A. They just follow along somewhat in the same direction as the whole line does.

Q. Why didn't you make that a solid line?

A. I don't know as there was any reason, particularly, except that it was so far between the points.

Q. You mean you didn't feel quite so certain of your theory as where the line is solid?

A. Yes; it might go in some other direction between the points.

Mr. Chapman: Q. Did you construct the map exhibit no. 2 of intervenors from any surveys or measurements of your own, or is it simply a copy of exhibit no. 2 of plaintiffs drawn on a smaller scale?

A. This portion of it--

Q. The eastern portion?

A. Yes; is in my own work.

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The Court: Q. Did you draw all of the map yourself?

A. Yes, sir; I did.

Q. Then the bounds of the different tracts was not furnished you, but you filled them in yourself?

A. Yes, sir.

Mr. Chapman: Q. How did you get the elevations of the water at this well 14 which you have marked,?

A. By measuring from the top of the curb to the water level.

Q. How far below the surface of the ground was that?

A. At different periods it was different.

Mr. Haskell: Do you mean how far the curb is below the ground, or what?

Mr. Chapman: The water.

A. On April 10, 1906, the water level measured below the curb 113 feet..

Q. Where is the curb that you speak of?

A. At the top of the shaft. We call it the top of the curbing. It is the top of the shaft lining, rather.

Q. What is the distance from the surface of the ground to the tunnel-- to the bottom of the tunnel-- at the point where that well 14 is?

A. That is approximately the level.

Q. 113 feet?

A. Yes, sir.

Q. Now you say you took some point here that you assumed to be of a certain elevation: Where was that point?

A. At the intersection of Holliman Avenue and the San Bernardino road-- San Bernardino Base Line road.

Q. That was the datum plane from which you made your meas-

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urements and compared them?

A. Yes, sir.

Q. Were they all made in comparison with that same point?

A. Yes, sir.

Q. Do you know a well that is known as the Sam Johnson well?

A. Yes, sir.

Q. Did you measure that?

A. No, sir.

Q. At no time?

A. No, sir.

The Court: Q. Whereabouts is it located?

A. There. It is marked Sam Johnson well.

Mr. Chapman: Q. And you say you never did make any observation or elevations to ascertain the elevation of the water in that well?

A. No, sir.

Q. Do you know when that well was sunk?

A. I don't ~~know~~ remember.

Q. Is there a pump for it?

A. Yes, sir.

Q. Is it pumped, or has it been?

A. Intermittently; yes, sir.

Q. Can you give us approximately the time it was being put down?

A. I think it was bored sometime in 1905.

Q. What does this square at this point on this map-- what tract is that? What does it represent?

A. A reservoir.

Q. What reservoir?

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A. It is one of the reservoirs in the Cucamonga Water Company's system.

Q. Can't you mark it"reservoir" so that we will know what it is?

A. Yes, sir.

Q. Is it now in use? A. Yes, sir; (Marked by witness as reservoir.)

Mr. Chapman: Q. Do you know when the Uplands well was sunk?

A. No, sir.

Q. Do you know when any of these wells to which you have been testifying were sunk?

A. The new well of the Sunset Water Company-- the second well-- the most easterly well was sunk sometime in the fall of 1905, or the spring of 1906.

Q. Is the well to the west and a little to the south of that another Sunset Water Company well?

A. Yes, sir.

Q. When was that put down?

A. Several years before.

Q. Can you approximate it?

A. No, sir; I wasn't here at the time.

Q. The well still further to the west and south of the two that I have called your attention to, was that another Sunset well?

A. No, sir.

Q. Whose well was that?

A. That belongs to the Cucamonga Water Company.

Q. Do you know how much water they pumped in these wells of the Sunset Water Company?

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A. Approximately.

Q. About what?

A. About 25 inches in each.

Q. And this well of the Cucamonga Water Company?

A. I think about the same; possibly a little more. I don't know.

Q. Do you know about how much they pumped in the San Jackson well?

A. No, sir.

Q. The Hermosa?

A. No, sir.

Q. The Upland Watern Company?

A. No, sir.

Q. Did you observe whether those wells were being pumped when you were making your measurements?

Mr. Haskell: You mean the ones last referred to?

Q. Yes, sir; the Sunset Water Company's well, the Upland Water Company's well, the Hermosa Water Company's, and the Cucamonga Water Company's wells to the west of the Sunset well.

The Court: You don't refer to the San Jackson well?

Q. Yes, sir.

A. I don't think any of them were pumped at the dates that we took the measurements.

Q. At any of those dates?

A. No, sir.

The Court: Q. Did you make any endeavor to take your measurements at a time when they were not being pumped?

A. Yes, sir.

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Mr. Chapman: Did you take them?

A. I did.

Q. Any other measurements than those which you have already testified to?

A. This well here I don't know about.

Q. The Upland Water Company's well?

A. No, sir; I am not certain about that.

Q. What about the others?

A. The Rubio well, I believe, possibly was pumped at the time I went by.

Q. Have you observed them pumping these wells at the Sunset Water Company and the Sam Jackson well and this other well here belonging to the Cucamonga Water Company?

A. I have seen them in operation.

Q. At or about the time of making these measurements, did you see them.

A. No, sir.

Q. Not even within two or three days of it?

A. No, sir.

Q. Nor the Upland Water company well?

A. That we don't know. We can't see till we get right there.

Q. And you don't know whether you ever saw it pumped or not?

A. No, sir; I don't think I did.

Q. And so with the Hermosa Water Company?

A. I have seen it in operation.

Q. When you were making these measurements at any of these times? Did you at the time of making them or a short time before or after pay any attention to the question of whether

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these wells were being pumped or had been pumped recently or not?

A. I think my first measurement, there was none of them in operation; and several of the subsequent measurements, and I can't tell which is which. There was none of them in operation.

Q. Did you make a memorandum of what you did observe with regard to the conditions existing at these various wells at and about the time you were making these measurements?

A. No, sir.

Q. Did you pay any attention to anything else except to get the elevation of the water level?

A. I don't think I did much

Q. Why were you in doubt about whether this map correctly showed the location of these various places marked on it or not?

A. I am not much in doubt.

Q. In answer to Mr. Haskell's question you said you "thought so". That you thought it was correct.

A. Yes, sir.

Q. Was there any doubt in your mind about its correctness?

A. No, sir.

Q. Then you knew it was correct or thought you knew it?

A. Yes, sir; I thought I knew it.

Q. Platted to a scale of 500 feet to the inch, if I understood you correctly?

A. Yes, sir.

Q. Can you tell us what would be the length of this tunnel no. 2? A. No, sir.

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Q. You can scale it, can't you? How long would that tunnel be.? Have you got a rule?

A. (The witness is furnished a rule.) It measured about 5000 feet.

Q. That is, following the course of the tunnel?

A. Approximately.

Q. Now in this Lone Star system of wells did you notice whether they were being pumped at the time you were making these measurements, or that they were not being pumped?

A. No, sir; not particularly. The first measurement I know they were not pumped.

Q. And the rest you are uncertain about?

A. Yes, sir.

Q. Do you know how much water they yield when they are pumped?

A. No, sir.

Q. None of them?

A. No, sir.

Q. How many of them are there?

A. I don't know; several of them.

Q. I notice on your plat here that the lower end of this Lone Star tunnel, there is a break at one point just before you reach the lower end, and two circles made there: What does that represent?

A. The two circles represent shafts, I think. I don't think there is any wells under them. They are holes in the surface of the ground. Right at that point or between those two places is where the bulkhead is placed.

Q. That is, the bulkhead that is in this Lone Star tunnel?

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A. Yes, sir.

Q. Is there any bulkhead in the tunnel leading from the Springs-- the Y tunnel?

A. No, sir; I don't think there is.

Q. The Y tunnels come together at this point marked "El 1364? Then is there a tunnel extending from that down to this point marked here "sand box"?

A. I think it is merely a pipe line.

Q. Laid but a short distance from the surface?

A. I don't know.

Q. At the point where the two branches of the Y tunnel come together, is that on the surface of the ground or beneath the surface?

A. I don't know that.

Q. Never have been there?

A. Not right at the point.

Q. Do you know whether there is a bulkhead in there or not?

A. I am not certain about it.

Q. When was the bulkhead put in the Lone Star tunnel?

A. I don't remember exactly.

Q. Approximately.?

A. I think about 1905, some time, or 1904. I am not certain.

Q. What time of the year?

A. It was put in in the summer or fall of the year.

Mr. Chapman: I believe that is all for the present, but I would like the privilege of recalling this witness this afternoon for further cross examination upon some matters upon which I am not just now informed myself.

The Court: Very well.

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Re-Direct Examination.

Mr. Haskell: Q. This dark, heavy line of which you have been asked some questions by Mr. Chapman and which is in part continued by dottings, and which on the left hand margin of the map is marked with the figures "1333", was that made before or after your last measurement of water?

A. That was made before.

Q. Before what measurements?

Q. Before all the measurements except those made on April 10 and 11 and 12, 1906.

Q. Then that line was not drawn with reference to any data that is on that intervenors' exhibit no. 2? That was made in reference to the elevation of water in wells subsequent to April 10, 1906?

A. April 10, 11 and 12; no, sir.

Q. I understood you to say that on one occasion when you were passing the Rubio well you thought it might be pumping water at that well?

A. Yes, sir.

Q. On what occasion was that, if you remember?

A. I think it was at the time that I took the levels across if I remember correctly.

Q. This last winter-- in what year?

A. 1906. It might have been in 1907, I think I took the levels across there.

Q. Where was the water being used, if you know, from that well at that time?

A. I don't know.

Q. Was that the only occasion when you observed any of

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these wells being pumped on any of the dates on which you took measurements?

A. I think possibly it was; I don't remember.

Q. Did you on any other occasion except when you saw the Rubio well being pumped, see any of the San Antonio Water Company's wells north of the base line being pumped?

A. No, sir.

Q. Now in the southerly portion of section 4, and near the center line of section 4, I see this: "Elev. 1472." What does that represent?

A. These figures represent the elevation of the top of the hill, I presume.

Q. What hill?

A. What they call the red hill locally.

Q. How far does the hilly condition extend in that neighborhood, and in what direction?

A. I should say about three miles.

Q. And in what direction?

A. Northeasterly.

Q. Would the most northeasterly point of that hilly condition be shown on this intervenors' exhibit no. 2?

A. No, sir.

Q. It would be beyond the right hand margin of the map, would it?

A. Yes, sir.

Q. Now, to the west of the point of which I first asked you, marked "Elev 1472", is there any hilly condition?

A. Yes, sir.

Q. How far west does that extend?

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A. It extends to a wash and thence beyond the wash probably a quarter of a mile.

Q. You say it extends to a wash. Where is that wash in reference to the line marked on intervenors' exhibit no. 2, marked tunnel no. 2? Where is the wash in reference to that line approximately?

A. It is west of it and follows along nearly parallel to it, and possibly some places 50 yards from it, and possibly more at other places.

Q. Now, beyond this wash, you say there is another hilly condition to the westward?

A. Yes, sir.

Q. How far from the tunnel line would the hilly condition appear to the westward?

A. I should judge about a quarter of a mile.

Q. About how high at that point would the hill rise above the wash, approximately?

A. I should say about 100 feet or 75 feet

Q. On the northerly side of this hilly condition what is the surface of the ground, between the hills and the mountains? What is the appearance of it?

A. It is a plain; unbroken.

Q. An inclined plane?

A. Yes, sir.

Q. And the inclination is in what direction?

A. Southerly.

Q. How far is it between the hills and the mountains on the north, approximately?

A. About four miles, I should think.

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Q. And what grade, approximately, or inclination has that plain?

A. I should judge from 100 to 150 feet to the mile.

Q. And this plain extends from these mountains to this range of hills, does it, of which you have spoken?

A. Yes, sir.

Q. And in reference to these hills, is the plain in contact with it, we will say in the neighborhood of the Lone Star tunnel as marked on Intervenors' exhibit no. 2? How high is that regular plain in reference to the top of the hill there where it is in contact?

A. At well no. 6,-- at that point I should judge-- oh, it may be 25 or 30 feet lower than the top of the hill to the south of it.

Q. And as you pass in a westerly direction along that line where the plain is in contact with the hill, are the hills higher or lower in reference to that plain?

A. They are higher.

Q. And as you pass in a northeasterly direction, are the hills higher or lower in reference to the plain?

A. They are lower.

Q. That is, the hills do not appear to be so high above the plain? That is what you mean to say?

A. Yes, sir.

Q. Is there any place from the westerly margin of these hills that you have described, between the westerly margin of the hills and the most easterly margin of the hills, where the inclined plane of which you have spoken, is so situated with regard to the top of the hill that it appears

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to be a smooth plain?

A. Yes, sir.

Q. Where is that?

A. That extends from Helman Avenue eastward, possibly three quarters of a mile.

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JOHN C. LYNCH.

JOHN C. LYNCH, a witness produced by plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

Mr. Britt: Q. State your name.

A. John C. Lynch.

Q. Residence?

A. Berkeley, California.

Q. What is your occupation?

A. Collector of Internal Revenue, first district of California.

Q. How long have you been acquainted if at all with the district of country comprising, and in the neighborhood of, Cucamonga Springs, in San Bernardino county?

A. Since December, 1884.

Q. Did you reside in that neighborhood?

A. From the spring of '85 I did. I lived at Cucamonga from November 1st, 1886; but before that I had lived during the year 1885 and 1886 there or in the immediate vicinity. I was there practically all the time.

Q. When?

A. During the years 1885 and '6. I was sometimes at Ontario

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and sometimes at the Cucamonga and sometimes at Etiwanda. But I was at Cucamonga practically all the time.

Q. And you lived in that neighborhood till when?

A. Till 1897.

Q. Were you engaged in any business there?

A. Yes, sir; I was manager of the Cuca onga Fruit Land Company and one of the directors-- resident director,-- from the time it was incorporated in '86.

Q. Were you carrying on a ranch in that neighborhood?

A. Yes, sir.

Q. Where was that situated with reference to the winery and the Cucamonga Vineyard Company's property?

A. About a mile and threequarters northeast. It is a little further than that, but it is about that.

Q. In the years 1885 and 1886 and subsequently, did you pay any especial attention to the water which emerged from the ground at about that is called the Cucamonga Springs on this land of the Cucamonga Land and Irrigation Company?

A. I don't know as I know just what the Cucamonga Land and Irrigation Company is. I knew all about all the waters there. I gave it a great deal of study and a great deal of attention and I had charge of all the works there during those years.

Q. Works of what?

A. Development of water and digging of tunnels and construction of pipe lines and flumes.

Q. And you know the land of which Mr. Somer, sometimes called Summers, had charge of at that time? A. Yes, sir.

The Court takes a recess until two o'clock.

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AFTERNOON SESSION:-

(Last question and answer is read.)

A. It was on sections 9 and 4.

Mr. Britt: Q. Did you personally know anything about the subdivision of the rancho Cucamonga into sections corresponding with the congressional surveys?

A. I know where the old Cucamonga Rancho lines run.

Q. What I want to know is did you personally have anything to do with causing the subdivision of the Cucamonga Rancho in sections corresponding with the lines of congressional townships?

A. No, sir; that was before my time.

Q. Then these tracts of land, including the Cucamonga Vineyard and the Cucamonga Springs, have been known as sections 4 and 9 ever since you were acquainted with them?

A. No, sir; they were in 4 and 5, and 9 was below. The vineyard probably is on 9. I don't think there was any water came to the surface,-- very little, if any,-- down at the extreme north end of 9.

Q. The water was on section 4, and most of the vineyard on section 9?

A. Yes, sir.

Q. And tthe tracts of land were known by those designations at the time of your first acquaintance with the property?

A. Yes, sir.

Q. Now, the property with which you were connected as manager there was not the same property as that which Mr. Sumner controlled?

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A. No, sir.

Q. Did you assist in a measurement made by William FitzHugh of the water flowing in the Cucamonga creek and diverted from the creek soon after your acquaintance with that tract of land began?

A. Yes, sir; in September, 1885, who went up there at my solicitation and made measurements.

Q. At that time what was Fitzhigh's business?

A. He was assistant state engineer.

Q. And you and he together made a measurement of the water, did you?

A. Yes, sir.

Q. Where was that point of measurement?

A. We were four days, I think, in all, and measured practically all the waters and all the streams and cienegas on what are known as the Cucamonga Springs.

Q. I had reference to the water diverted from the creek itself. On the east side of the red hill.

A. The principal measurements were almost at the end of the 30 inch pipe line now, and that pipe line was not in existence then.

Q. How was the water diverted in the creek at that time?

A. By a flume.

Q. Do you know what they called the creek division box not far from the old brick hotel on that property?

A. Yes, sir.

Q. Was that the place where you made the measurements at that time?

A. Yes, sir; there was a division box, part of the water

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going in the Cucamonga Company and part to the Vineyard Co. There was a division there at that time in a wooden flume.

A. At that place where you and Mr. FitzHugh made the measurement?

A. Yes, sir; we made a measurement there.

Q. You measured all the water flowing in the creek?

A. Yes, sir.

Q. How much did you find the water to be?

A. In the creek proper there was 225 inches and a fraction. I think my figures are correct. I know I gave my recollection last night, and refreshed my memory; but I know there was about 225 inches.

Q. I think that that is about correct. Did you at the same time make a measurement of the water flowing from what is called the China Cienega on the east side?

A. Yes, sir.

Q. Do you remember how much water you found flowing there?

A. I think it was 51 inches. I have got the memorandum taken from a report that I know was correct at the time.

Q. If you have the memorandum you may produce it.

A. I assisted in all those measurements and made the computations myself at the time. (Consults memorandum.) It was 51.75 inches at the China Cienega and 16.52 just above there and below what is now the Y tunnel, which didn't exist at that time.

Q. And what was the exact measurement at the Creek Division box?

A. That was 225.36 inches.

Q. Those inches mean--

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A. Miners inches.

Q. Measured under a four-inch pressure?

A. Under a four-inch pressure; yes, sir.

Q. Then subsequent to that time did you assist in any measurements made by one Culver,-- J. T.?

A. Yes, sir. That was in '86.

Q. Did you know Culver?

A. Very well.

Q. What was his business?

A. He was a civil engineer and he was located over in Ontario, and he had a good deal to do with the early development of the water system there.

Q. At what time were the measurements made by you and Mr. Culver?

A. In November, 1886.

Q. Have you any memorandum of that?

A. Yes, sir.

Q. Give us the results.

A. In the big stream or in the rock 261.43 inches. In the China there was 64.07 inches; and up at the Y, 11.46 inches. I don't know as they were made exactly in the same spots in the China basin, but in the other place they were made practically in the same spot, so that the two sums might have been different, or the two amounts might have been different on account of taking in more water at one measurement than in the other, at the China Ciengea.

Q. What was the date of the measurement made by Mr. Culver and yourself?

A. It was in November, '86. I don't remember the date.

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Q. Were there afterwards any measurements made by other engineers at which you assisted or took part?

A. Yes, sir; we made a great many measurements. When we had nothing else to do we would go up and measure the water. Fred Eaton made a measurement in '87, and Mr. Wright and I made a good many measurements.

Q. Have you any memorandum made by yourself and Eaton?

A. I haven't a memorandum of them, but I remember it was less a little in the stream. I think 215 inches, but I haven't looked that up.

Q. At the time you made that measurement with Eaton had the Y tunnel been built or not?

A. We were at work on that.

Q. Did you have anything to do personally with the driving of the Y tunnel?

A. Yes, sir; I had charge of it. My recollection is there was about 160 inches in the Y tunnel, even measurement. I am pretty sure that is correct.

Q. When was the Y tunnel begun?

A. In 1886.

Q. And finished when? Next year?

A. We stopped work the next year, and then have worked some on it since; but practically it was finished in '87. I think possibly it was within a few years that it was extended, but I have no knowledge of it. I think there was no work done except clearing it out up to '87.

Q. You know of only one Y tunnel on section 4?

A. It is the only tunnel that I know of that was on section 4, up to the time that I left.

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Q. Explain the manner of the construction of the Y tunnel? Did it proceed underground from the first, or was it approached by a cut?

A. No, sir; we started at the south end of the cienega. There was two cienegas: one called the China cienega, and the Y tunnel cienega, and they joined, and we started at the lower end--

Q. Do you find the Y tunnel delineated on plaintiffs' exhibit 2 on the bard?

A. We started practically at the end of the 16-inch pipe line running from the Y tunnel, with a ditch, and ran up until we coulan't go any further with two shovelings. It was 14 or 15 feet deep and we got a good breast there, and then we started with the Y tunnel.

Q. It is indicated on this map, plaintiffs' exhibit 2, by a line marked "mouth of tunnel", about 6 inches above the figures "526.97"?

A. Yes, sir.

Q. In driving that tunnel what sort of material was encountered?

A. First on the surface there was muck and decomposed matter, afterwards gravel, mixed with clay,-- stratas of gravel and stratas of clay.

Q. As you approached the west branch of the Y what did you observe, and what material?

A. We were in big boulders there. Some of them-- That is one of the reasons we stopped. It was too difficult to work ahead and we were getting plenty of water at the time

Q. Of what sort of stone were they?

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A. Grahite.

Q. What was the appearance of the boulders?

A. They were round and plainly glacial boulders, worn by water action.

Q. What did you notice as to the freedom with which the water came thro gh the mass of the boulders?

A. It poured through in streams-- big streams.

Q. How did that compare with the east branch of the "Y" tunnel?

A. There was more water in the west than in the east; considerable more. In the east branch there were fewer boulders, and we seemed to be running out of the water-bearing stratum.

Q. As to this creek in the wash, the water of which was measured by yourself and Mr FitzHugh in '85, state whether it flowed into a defined channel?

A. The water in the creek was in a clearly defined channel, although there was little streams in the cienegas to the west of the creek, going up into the red hill and all the way down,; the streams there were small streams running into the creek. The main volume of the water raised within comparatively a small area. The water came out in a big stream under an oak tree and seemed to come up out of the bottom of the creek.

Q. You know the road known as Base Line there?

A. Yes, sir.

Q. How far did the water in those days appear in the channel of the creek below Base Line? About what distance?

A. I couldn't tell you exactly, but anywhere from 800 to

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somewhere between 50 and 300 feet, I should think. It was not a thousand feet from the base line and it was more than 500; but exactly, I couldn't tell you now. I could tell the exact spot. I think the old tree is there and I think I would recognize it. The water started out under an oak tree and the bank caved out so that the roots projected and stuck out over the creek bed.

Q. Did you notice any fish in early times?

A. Yes, sir; there used to be trout there. I have caught trout there.

Q. In what years?

A I have caught trout there in '85 and '6. I don't know as I did after that, because we took the water out, and I don't remember now, although I have caught trout in the reservoirs that were fed from the stream subsequent to that time. That is, we caught them when we took the water out. They won't bite in the reservoir.

Q. Without calling for any fish stories, how big were the trout?

A. They were not very large. The largest I ever caught was seven inches long, or perhaps eight.

Q. At the time you first knew the property was there a reservoir there in which the water from the creek was taken?

A. There was a reservoir belonging to the Vineyard Company which received their portion of the water.

Q. Then was that situated with reference to the brick hotel?

A. It was south and a little bit east.

Q. Between the hotel and the winery?

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A. Yes, sir.

Q. Was there a winery there when you first knew the property?

A. Yes, sir.

Q. What was that reservoir used for?

A. It was used for the storage of water for the irrigation of the vineyard, and they also operated the winery by power generated from the water of the reservoir.

Q. State whether wine was made there on any considerable scale at that time?

A. Yes, sir; they had about 400 acres in vineyard. I guess there was 325 actually in vineyard. There was 400 acres in the tract.

Q. That is, the Vineyard Company?

A Yes, sir. Some of it was very old; planted in '35.

Q. Do you know anything about the extent of the manufacturing carried on at the winery?

A.Yes, sir; I don't know about thequantity; I never had anything to do with it.

Q. Was the entire crop worked up there at the winery?

A Oh, yes; it was all worked up and they used to buy grapes from the other vineyards. At that time there was a good many raisins raised in the country, and the second crop that wasn't good for raisins were sold at the winery.

Q. I would like your attention at exhibit 2 again. There is evidence here to the effect that water was taken at that creek division box and carried through what is marked in the upper right hand part of this map "22-inch cement pipe." And calling your attention to that portion of the map, below this

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22-inch cement pipe, do you remember whether there were any crops growing on that portion of the land-- this 526.97 acre tract-- and also the property of the present Cucamonga Vineyard Company which extends up along Hellman Avenue and between Hellman Avenue and the 526.97 acre tract, below this 22-inch cement canal,-- whether at the time you were first acquainted with the property there was any cultivation?

A. Yes, sir; it was cultivated continuously.

Q. To what?

A Originally they used to have corn and pumpkins planted there, and some alfalfa. Afterwards they put it all in alfalfa except over on this side they put in a vineyard. There was I think about 20 or 30 acres in the vineyard there.

Q. I notice that you point to a portion of the map lying north of the San Bernardino road.

A. And west of the Hellman Avenue.

Q. It was adjacent to those two roads?

A. Yes, sir; it came right to those two roads.

Q. Was there any orchard of deciduous trees-- any walnut orchard-- there at that time?

A Over surrounding the hotel known as the Mountain View hotel, which was about a quarter of a mile north of the winery there was an orchard, walnut and some orange and apricot trees.

Q. Do you know whether that orchard was irrigated with water from the creek?

A. Most of that was irrigated from water coming from above here-- from what is called the Chino Cienega.

Q. And how was that part of the ranch which you refer to below the 22-inch cement pipe as having been planted in pump-

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kins and afterwards in corn and alfalfa, where was that irrigated from?

A. The lower portion of it from the reservoir and the upper portion from the cienegas in this part of the section.

Q. Do you know whether there was a China garden on the place at that time in '85, or did that come later?

A. I think it was there in '85. I don't think it remained. I am very sure it was there in '85 or '6. That was right south of the China Cienegas.

Q. That was irrigated?

A. Yes, sir.

Q. What was grown there?

A. Vegetables of all kinds. An old Chinaman used to deliver vegetables around through the country.

Q. In those times and during the years that you knew the property, until '97 when I think you removed from the locality, state whether the irrigation of those lands continued about the same as when you first knew them?

A. Well, they put in more land in alfalfa. I should say it was about-- they commenced putting in alfalfa in '87.

The Court: Q. You mean the Fruit Land Company?

A. No; the Vineyard Company. You refer to the Vineyard Company?

Mr. Britt: Q. Yes. This plat shows only the lands of the Cucamonga Land and Irrigation Company and the Cucamonga Vineyard Company.

A. Commencing in '87 and especially in '88 they used all the water there-- they used more than they were entitled to, because they took some of ours that we couldn't get

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in our pipe lines, and wouldn't compensate us with other water, and we used to have a good many scraps over it.

The Court: Q. I was going to ask where the lands lie that your company was cultivating, with reference to the vineyard.

A. To the east and south.

Q. What were you cultivating there?

A. It was being planted in orchards.

Q. But not much vineyards?

A. There was some vineyard. We distributed water for all the Cucamonga settlement under the contracts we made with them, and there was more or less vineyard, and then we were selling the lands, and the water was utilized for that, and raising potatoes.

Q. The joint measuring box divided the water between your company and the vineyard?

A. Yes, sir; there were two joint measuring boxes. There was one immediately above-- it is northeast of the bridge, and ~~it is~~ right near the reservoir, south of the hotel, on the Vineyard Company property there was a big division box there.

Mr. Britt: I will remind the Court, if it has for the moment escaped your Honor, that in the complaint we allege on behalf of the Cucamonga Vineyard Company and the Cucamonga Land and Irrigation Company the ownership of one-half of that water, and that the old Settlers' Water Company, Mr. Waters' immediate clients, own 35.84 inches.

The Court: Yes; I understand that.

A. That measuring box was put in in '88. There was a measuring box up in the stream prior to that time.

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Q. How far north toward the base line did the cienegas, when you first knew the property, extend?

A. I think it was two hundred feet; two or three hundred feet.

Q. From the base line?

A. Yes, sir. That is, there was one cienega that extended up there, up to the end of the Y tunnel.

Q. Did that cienega in which the Y tunnel was built extend further north toward the base line than the others?

A. Yes, sir.

Q. During those times, that is, from the years 1885 on till '97, state whether the vineyards on the Cucamonga Vineyard Company's lands were irrigated from the sources which you mention?

A. Yes, sir.

Q. Had you something to do personally with the construction of some of the wells over on the west side of the red hill?

A. Yes, sir.

Q. In what years?

A. In 1886 and 1887, and I think in 1889 last.

Q. Are you acquainted with what is called the 90-acre tract on that side of the red hill-- the west side?

A. Yes, sir.

Q. You know its location and outlines?

A. I did know it perfectly, but I will have to look at the map again.

Q. Look at this map, plaintiffs' exhibit 1, if you please, and I will ask your attention to what is designated there near the northeast corner of the 90-acre tract as well no. 1. You observe that, do you?

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Q. Yes, sir.

Q. State whether that is one of the wells which you excavated or caused to be excavated.

A. Yes, sir; that is the first well ever sunk in that country. It is right in the northeast corner of the 90-acre tract.

The Court: Q. That is not the wel designated as 14?

A. No, sir.

Mr. Britt: Q. It is right in the edge of the cienega?

A. Yes, sir. Up in the extreme northeast corner of the cienega.

Q. How was it sunk?

A. It was a drive well.

Q. To what depth?

A. 220 feet, I think. I won't be sure. One was 265 and the other 220.

Q. Which was the 265?

A. The second well, I think, was the deeper.

Q. Point that out.

A. It is about 200 feet to the west and a little north of the other.

Q. How is it designated on this map plaintiffs' exhibit 1?

A. As well no. 2, 1887, and the other is well no. 1, 1887.

Q. Was that the year in which the two wells were sunk?

A. I presume they must have been. I would have said they were sunk in '86, but I may be mistaken.

Q. It was about that time? A. Yes, sir. It was in '87. I remember now, because it was subsequent to the building of the pipe line on the west line.

Q. Both of those were bored wells?

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A. Yes, sir.

Q. Do you remember the diameter?

A. Eight inch, if I am not mistaken. I speak from memory, that is all.

Q. How much water did you get from those wells?

A. Just a fraction over 15 inches from the two wells, well no. 1 having the greater flow of the two.

Q. Did the water flow at the surface of the ground?

A. Yes, sir; the pipe stood about 18 inches above the ground and it flowed over the top of the pipe.

Q. And the two wells together produced about 15 inches?

A. Yes, sir.

Q. How long did they flow that amount of water?

A. They kept up their flow about a year and then it commenced diminishing. The water seemed to bring up sand and finally the pipe filled with sand so that there was just a little water coming through the sand and running over. That was probably four years that it took for the pipes to fill up. But the flow kept diminishing all the time.

Mr. Chapman: Q. Which one was that?

A. Both of them; wells 1 and 2.

Mr. Britt: Q. Was the water utilized for any purpose by your company?

A. Yes, sir.

Q. Your company was the Cucamonga Fruit Land Company?

A. Yes, sir. And then afterwards the rights were transferred to the Cucamonga Water Company. We ran a ditch connecting these wells down to our lower system.

The Court: Q. The Cucamonga Water Company was just a kind

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of an annex to the Fruit Land Company? They sold the land and conveyed stock in the water company?

A. Originally, yes; but subsequently they were very distinct. In the early times the control and management of the two were practically the same.

Mr. Britt: Q. The wells didn't prove to be of any value as a permanent source of supply?

A. No, sir; not at all.

Q. They petered out and dried up?

A. Yes, sir.

Q. About four years after they were put down?

A. Four or five years, and posibly less than that. I haven't had any opportunity to refresh my memory, but I know that we never paid much attention to them, except at first we thought we made a great discovery, but subsequently they filled up. They were not deep enough. They were too shallow, as a matter of fact.

Q. You don't know that they were deep enough or not? If you had gone down deeper you might have found drier material.

A. I don't know, of course.

Mr. Britt. That portion is volunteered, and we move to strike it out as not responsive.

The Court. The motion is granted.

Q. Afterwards you experimented further with some wells over on the west side and lower down on the hil?

A. Yes, sir.

Q. Point out those wells.

A. There were two indicated on the map. This is not numbered, but there is a well just a short distance above the branch

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tunnel.

Q. How is it designated?

A. Well over tunnel.

Q. And where is the other well indicated on that map which you caused to be sunk?

A. Designated as well no. 3.

Q. Is there any figure following it?

A. 1891.

Q. And marked on this map about about two inches above the place where "well over tunnel" is indicated?

A. Yes, sir..

Q. Then you sunk another that is not marked there at all.

A. We sunk a well over on the branch tunnel.

Q. That would be pretty nearly west from the well marked on the map "well over tunnel"?

A. Yes, sir; but that we pulled up.

Q. When were those three wells sunk?

A. The well over the tunnel and the well which we pulled upwas sunk in '88 or '89; probably '89.

Q. And the other well which is marked there as well no. 3?

A. I think thatwas 1891.

Q. Those were drilled wells?

A. Yes, sir.

Q. Do you remember what depth?

A. About 200 and some feet. I don't remember very much about that because they were failures and I didn't charge my mind.

Q. What success as water producers were those wells?

A. Two of them were absolute failures. And the well that is

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marked "well over tunnel" we got about four inches on that. It was only a very small flow. That was not on the surface. We cut the well into the tunnel.

Q. That is, the Eady tunnel, so called?

A. Yes, sir.

Q. How long did it flow even four inches?

A. That I couldn't tell. There was a cement pipe line put in there afterwards and it was filled up. The flow was very slight at that time.

Q. Mr. Lynch, that Eady tunnel ceased to produce water of any moment some years after your residence began there?

A. It ran down to a flow of about 20 inches.

Q. In what year or about what year?

A. It is very difficult for me to locate that. I should say in '92 or '93. I can't give you the dates definitely. The matters have passed from my mind.

Q. Did the tunnel cave in to any extent?

A. It was all caved in. The ventilation was poor and the timber rotted-- dry rot-- and the tunnel caved in.

Q. And the 20 inches was the output at the mouth of the tunnel?

A. Yes, sir.

By Mr. Waters:

Q. Mr. Lynch, did you early in your experience at Cucamonga have anything to do with the controversy which existed there as between the company and some persons who had purchased land and water?

A. Yes, sir; I represented the Cucamonga Company in that controversy-- what is known as the old original company.

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Q. Do you remember the clause in the old deeds out of which that controversy arose? I will show you one of the old deeds.

A. I used to know it very well. It was in regard to semi-tropical culture.

Q. I show you a deed from the Cucamonga Company to Louis Smith. Have you ever seen that deed?

A. Yes, sir.

Q. Is that the form of deed that the company has been giving to purchasers of land and water at Cucamonga?

A. Yes, sir.

Q. I call your attention to the expression in that deed in the matter of the description of the water right, and I will ask you if the controversy which you refer to had to do with that, or the construction of that provision?

A. It did.

Q. Please read that clause so we will have it in the testimony.

A. (Reading) "With the same proportion of water from the springs belonging to the company that his land bears to all the land which can be reasonably irrigated for semi-tropical culture with said water, reserving the right of way through said lands for the conveyance of water to the lots beyond, and along its borders for roads."

Q. There had been several of such deeds made prior to 1885?

A. 520 acres I think sold under those deeds to various parties.

Q. What controversy arose?

A. As to the amount of water that was conveyed by these deeds, the settlers claiming that they were entitled to all

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the water from the springs, and the company holding that they were entitled to only a proportion of the waters.

Q. Now, the company kept on selling lands, did it?

A. Yes, sir.

Q. What effect did that have on the settlers-- upon their minds, at least?

A. It went further than their minds. It went to their bodies. There were fights and various conflicts, both verbal and physical, growing out of it.

Q. Do you remember the circumstances attendent upon a settlement of that difficulty?

A. There were two settlements. A portion of the settlers agreed to accept-- The company built a flume and the water was originally conveyed down to their xxxxxtlands in a ditch, and the company built a flume, and a portion of the settlers accepted an inch to 10 acres, and the others refused to come in at all, and that was the condition of affairs when the Cucamonga Fruit Land Company bought out the Cucamonga Company. Subsequent to that time, the settlers that had refused to sign agreements with the Cucamonga Company entered into agreements with the Cucamonga Fruit Land Company that they would pay their proportion of a cement pipe line--

Mr. Chapman: Q. Was that agreement in writing?

A. The original is not. There was no written agreement. But subsequently there were deeds given founded on that agreement. There was an exchange of rights between the settlers and the company. There was no written agreement at the time.

Mr. Waters: I will state here for the benefit of Court and

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counsel that I am only examining this witness relative to this controversy and the settlement of it in order to get before the Court the circumstances surrounding and attendant upon the signing of certain deeds which I shall offer in our deraignment of title. I want to get at the surrounding circumstances.

Mr. Chapman: You are not trying to prove title now?

Mr. Waters: No, sir; only to get the surrounding circumstances, to illustrate the deeds.

A. Those settlers who had refused to enter into a contract for an inch to 10 acres had a meeting at the winery at which I think all of the directors of the Cucamonga Fruit Land Company were present, nd they entered into a verbal agreement there that the company would build a 22-inch pipe line from the creek or from the division box of the Vineyard Company to Hellman Avenue, and put in a division box there, setting out their waters to them first, and there was a subsequent exchange of deeds between the Cucamonga Fruit Land Company and the settlers ratifying that agreement.

Q. Do you remember the quantity of water represented by those settlers who agreed upon the making of that pipe line?

A. 33 and a fraction inches. It was 33 inches. I don't remember whether there was a fraction. But Mr. Wright and the superintendent put in the division box. I remember that.

Q. The expense of the 22-inch pipe line from the main division box where the water was divided in half, below the hotel, and from there on to Hellman Avenue, was where the pipe line was to go?

A. Yes, sir.

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Q. The expense of that pipe line, how was that agreed upon to be borne-- the expense of making it?

A. They paid part of the expense.

Q. Did they pay the part represented by their water that was being carried, proportionate to the total half of the water that went through?

A. They paid their pro rata on the assumed basis of the quantity of water to be delivered there.

Q. Then they were to be co-owners with the Fruit Land Company in that line of pipe, or not?

Mr. Chapman: Isn't that shown by an agreement in writing?

Mr. Waters: He says it was a verbal agreement, and you won't find it in the deeds when the deeds are brought in. You will find the water right, but not the mention of the pipe line.

A. I supposed that would be the result. The agreement was that they should pay up a certain proportion of the pipe and we guaranteeing that it should not exceed a certain amount, if my recollection serves me right; that we put in this division box jointly, under the supervision of their engineer and our engineer, which was subsequently carried out.

Mr. Chapman. I move to strike out the answer of the witness of the understanding that he reached himself as a conclusion from the fact that they paid part of the expense.

Mr. Waters: That part of the conclusion may go out.

The Court: Let us agree on that you will have out or in.

Mr. Waters: That part which says "I supposed that would be the result." may go out.

Q. Do you know Mr. Hellman's signature?

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water that went th

was being carried, prov

Q. Did they pay the part re

paid part of the expense

ance of making it?

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A. Yes, sir.

Q: He was president of the Fruit Land Company at that time?

A. Yes, sir; during all the time that I was connected with the company.

Q. Did you know M. L. Wicks?

A. Yes, sir.

Q. Was he secretary of the company at that time?

A. Yes, sir.

Q. Are you familiar with the fact whether that pipe line was put in?

A. Yes, sir.

Q. And that measuring box?

A. Yes, sir.

Q. Were they constructed?

A. Yes, sir.

Q. Do you remember the manner or method by which the moneys were collected from the old settlers for their share of the expense of making that pipe line? Was that matter done through you at all?

A. Mr. Hodgkins and I had charge of all of it. I collected a portion of it and possibly all.

Q. Do you remember whether the receipts were issued from the office and came to your hands, or how it was done?

A: We had blanks prepared and I made them all out or had them made out and carried them around and I exchanged them.

Q. I call your attention to that writing and ask you if the signatures to that writing are genuine.

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A. The body of it is in my handwriting; "Cucamonga Fruit Land Company" is in my hand writing. "I. W. Hellman, President" is in the handwriting of I. W. Hellman; and "W.L. Wicks" is in the handwriting of W.L. Wicks.

MR. WATERS. I offer this in evidence.

THE COURT: Any objection.

MR. CHAPMAN: No, sir.

THE COURT: It will be admitted.

Document marked "Plaintiffs' Exhibit 4, and read in evidence as follows:

I. BENJAMIN,
OFFICIAL REPORTER,
SUPERIOR COURT.

PLAINTIFFS' EXHIBIT 4.

Received from Francis G. Smith the sum of _____ hundred and sixty nine 20/100 dollars, being payment in full of his share of the amount due the Cucamonga Fruit Land Co. for constructing water pipe in accordance with the terms of a certain contract made and entered into by said Francis G. Smith and others at Cucamonga with the Cucamonga Fruit Land Company.

Cucamonga Cal. Sept 12th 1886

Cucamonga Fruit Land Company

By I. W. Hellman

President

Attest

M . L. Wicks,

Secretary.

I BENJAMIN
OFFICIAL REPORTER,
SUPERIOR COURT.

THE COURT: That reads as though there was a contract as to the construction: Does that refresh your memory as to that ? A. Originally there was no contract at the time of the meeting, and it was ratified by deeds afterwards, and I couldn't tell you at this time whether there was ever any contract entered into; I have no knowledge of there ever having been any contract, except the deeds which were exchanged; we had a meeting at which all the settlers were present; we agreed there; but there were no writings entered into at that time.

MR. WATERS: At this time I will offer the deed in connection with the witness's testimony, the Smith deed from which I have had the witness read a clause.

MR. CHAPMAN: No objection.

THE COURT: It will be admitted.

Document marked "Plaintiff's Exhibit 5, admitted in evidence as follows:

I. BENJAMIN, OFFICIAL REPORTER, SUPERIOR COURT.

PLAINTIFFS' EXHIBIT 5.

KNOW ALL MEN BY THESE PRESENTS: That the Cucamonga Company a corporation, Grantors, for and in consideration of one thousand Dollars, in gold coin of the United States, to it paid by Lewis Smith, of Cucamonga in the County of San Bernardino, State of California, Grantee, the receipt whereof is hereby acknowledged, do hereby grant in fee simple absolute, to the said Lewis Smith and to his heirs and assigns,

All that certain real property situated in the County of San Bernardino, State of California, bounded and described as follows, to-wit: The south east quarter (SE 1/4) of the North east quarter (NE 1/4) of section ten (Sec 10) in township one south, range seven west (T. 1 S. R. 7 W.) of San Bernardino base and meridian, with the same proportion of water from the springs belonging to the Company that his land bears to all the land which can be reasonably irrigated for semi-tropical culture with said water; reserving a right of way over said land for the conveyance of water to lots beyond, and along the border for roads, together with the appurtenances.

To have and to hold the same unto the said Grantee and to his heirs and assigns forever.

In Witness Whereof , the President of said Company, being duly authorized thereto by a resolution of the Board of Directors, hath hereunto signed the name and affixed the corporate seal of said Company this fourth day of January A. D. one thousand eight hundred and eighty two.

Signed, Sealed and Delivered in presence of — Cucamonga Company (Seal) By John Archbald (Seal)

L. BENJAMIN OFFICIAL REPORTER, SUPERIOR COURT.

Andrew J. Coffee President (Seal)

State of California, } ss.
City and County of San Francisco. }

On this Fourth day of January in the year One Thousand Eight Hundred and Eighty two before me Andrew J. Coffee, a Notary Public in and for the said City and County, duly commissioned and sworn, personally appeared, John Archbald, known to me to be the President of the "Cucamonga Company" the Corporation that executed the within and annexed Instrument, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, the day and year in this Certificate first above written.

Andrew J. Coffee,
Notary Public.

(Seal)

Endorsed:-

Recorded at Request of Geo. D. Smith, April 11th, A D. 1882, at 32 min. past 11 o'clock A. M. in Liber 25 of Deeds, page 526, A. F. McKenney, Co. Recorder, By S. M. Wall, Deputy.

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Q. These deeds to the old settlers were upon a printed form?
A. Yes, sir.
Q. Would you know that form if you were to see it?
A. Yes, sir; I prepared it myself.
Q. I will call your attention to a deed of date May 12, 1886, by the Cucamonga Fruit Land Company, grantor to Francis G. Smith, and ask you if you are familiar with that odnument?
A. Yes, sir.
Q. Is that one of the deeds you refer to a being executed in consummation of that meeting or agreement made at the meeting of the winerky?
A. Yes, sir.
MR. WATERS: We offer that deed in evidence as Plaintiffs' exhibit 6.
MR. CHAPMAN. No objection.
THE CO RT: It will be admitted.

Document admitted and read in evidence, marked "Plaintiffs' Exhibit 6, as follows:

I. BENJAMIN, OFFICIAL REPORTER, SUPERIOR COURT.

PLAINTIFFS' EXHIBIT 6.

THIS INDENTURE, Made the 12th day of May in the year of our Lord one thousand eight hundred and eighty six

Between The Cucamongo Fruit Land Company, a corporation duly incorporated under the laws of the State of California, party of the first part, and Francis G. Smith of Cucamongo, State of California, the party of the second part, Witnesseth, that the said party of the first part for and in consideration of the execution to the party of the first part by the said second party of a quit claim deed, which jointly with this deed defines and adjusts the water rights of the party of the second part in the Cucamongo Rancho, does by these presents demise, release, and forever Quitclaim, unto the said party of the second part, and to his heirs and assigns a certain part or portion of that certain water right, formerly owned by the Cucamongo Company , a corp oration duly existing under the laws of the State of California, said water being situated in the said Cucamongo Rancho, County of San Bernardino, State of California, and particularly described as follows, to-wit :

An amount of water, equal to a constant flow of two and one half (2 1/2) inches of wat r under four inch pressure, measured from centre of aperture, out of the waters of the springs of the Cucamongo Cienegas, lying in the Cucamongo Rancho, north of the Cucamongo Vineyard ~~to be delivered in heads of not less than twentyfive inches under said pressure~~, said water herein quitclaimed being the same agreed by compromise to be the existing water right of the party of the second part. purchased with twenty acres of land, being a

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portion of the land conveyed by the Cucamongo Company to J. C. Lynch and described in a deed recorded in book 44 of deeds page 172, Records of San Bernardino County.

To Have and to Hold, all and singular the said water right unto said party of the second part, and to his heirs and assigns, forever.

Ib Witness Whereof, the said party of the first part, has hereunto caused to be set its corporate names and seal the day and year above written.

The Cucamongo Fruit Land Company

By Isaias W. Hellman, Jr. (Seal)

(Corporate Seal) President

and M. L. Wicks, (Seal)

Signed, Sealed and Delivered Secretary.

in the Presence of

_____

_____

State of California ,)
) ss.
County of Los Angeles,)

On this twelfth day of May, A. D. one thousand eight hundred and eighty six, before me, James C. Kays, a Notary Public in and for the County of Los Angeles, personally appeared Isaias W. Hellman and M. L. Wicks known to me to be the President and Secretary of the Corporation that executed the within instrument, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed

J. BENJAMIN
OFFICIAL REPORTER,
SUPERIOR COURT.

my Official Seal, at my office, in the County of Los Angeles, the day and year in this Certificate first above written.

James C. Kays,

(Seal) Notary Public

Endorsed:-

Recorded at the Request of George D. Smith, May 22nd, 1886, at 48 minutes past 2 o'clock P. M., in Record of Deeds, page 551, Records of the County of San Bdno, Legare Allen, County recorder, By T. J. Polton, Jr., Deputy.

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MR. WATERS: Now, gentlemen I have not here the corresponding quitclaim that went back to the company but I have another one of the same series.

Q. Do you recognize that document and the form of that document?

A. Yes, sir.

Q. Is that the printed form for the corresponding quitclaim deeds that were givn back by the settlers to the Company?

A. Yes, sir.

Q. In settlement of that dispute?

A. Yes, sir.

MR. WATERS: I will offer that as being a sample; it is one that we deraign title under anyway.

MR. CHAPMAN: No objection.

THE COURT: It will be admitted.

Document admitted in evidence, marked and read in evidence, "Plaintiffs' Exhibit 7" as follows:

I. BENJAMIN, OFFICIAL REPORTER, SUPERIOR COURT.

PLAINTIFFS' EXHIBIT 7.

THIS INDENTURE, Made the Seventeenth day of May, A. D. 1886,

Between Edwin P. Norwood party of the first part, and The Cucamonga Fruit Land Company, a corporation duly incorporated under the laws of the State of California, the party of the second part witnesseth that the said party of the first part in consideration of the execution to the party of the first part by the party of the second part of a Quitclaim Deed, adjusting and defining with this Deed, the water right of party of the first part does by these presents demise, release, and forever Quitclaim unto the said party of the second part, and to its successors or assigns all that certain water right and right of development of water in the Cucamonga Rancho County of San Bernardino, State of California, particularly described as follows, to-wit:

All water rights and rights of development of water of party of the first part, in and to the waters of the Cucamonga Rancho, except an amount equal to a constant stream of two and one half inches of water under a four inch pressure measured from the center of the aperture, out of the water arising from the Cienegas, noth of the Cucamonga Vineyard, said water excepted and reserved from this instrument being the same agreed by compromise to be the existing water right of the party of the first part.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

E. P. Norwood, (Seal)

I. BENJAMIN
OFFICIAL REPORTER,
SUPERIOR COURT.

Signed, Sealed and Delivered in the Presence of

_____

_____

State of California,)
County of San Bernardino) ss.

On this 17th day of May, 1886 before me C. D. Manchester a justice of the Peace in said county, personally appeared Edwin P. Norwood known to me to be the person who executed the above instrument and acknowledged to me that he executed the same.

C. D. Manchester,
Justice of the Peace.

Endorsed:-

Recorded at Request of J. C. Lynch, June 8th, A. D. 1886, at 9:40 A. M. Book 47 of Deeds, Page 100 & 101 Legare Allen, County Recorder.

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Q. When was that pipe line made?
A. In 1886.
Q. When it was made was there a measuring box put in at any point along that line?
A. Yes, sir; on the east side of Hellman Avenue.
Q. Can you describe that measuring box?
A. It was a measuring box about eight feet long, six or eight feet long, and with an aperture 16 inches long, with a steel feather edge; it was so arranged that the 32 inches - or the 33 inches it was,- would flow out of the box, before any water would flow out from the other aperture.
Q. Was it so arranged as that the overplus above that quantity would flow out elsewhere into another aqueduct?
A. Yes, sir.
Q. From that measuring box, did these old settlers, we will term them for short, did they have an aqueduct to connect with, and take the water from there on?
A. Yes, sir; they controlled the conduits, distributing the water to their lands from the box; we had control up to the box,
Q. And the water of the company as it was measured out of the box to your company, went off in some aqueduct belonging to your company exclusively?
A. Yes, sir.
Q. From the time that pipe line was constructed did it carry water?
A. Yes, sir.
Q. Was the water carried through it in these proportions that you have named?
A. Yes, sir.

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Q. Who got the water that went into the Old Settlers' aqueduct? I mean to say what body of people or class of people?
A. Well, those first purchasers from the old Cucamonga Company
Q. Those who had deeds corresponding with the ~~xxxxplans~~ sample that I have introduced here?
A. Yes, sir.
Q. From that time on did they or not get that water?
A. They did for a number of years.
Q. Up to what time did they get it to your knowledge,- from the time that pipe line was built, down to what date did they get that water?
A. I am not sure whether they got their water in '97 or not; I think they did; and I guess they got it up to the time I left there; but they got it up to '96 or '97, and I am not sure but what they did then.
Q. Did they get that stream of water continuously?
A. Yes, sir.
Q. Do you know to what use they put it?
A. I know in a general way they used it for irrigating; and they had a little domestic system connected with it, so as to give them pressure for domestic purposes.
Q. You were familiar with the uses of the water during the period you have named as the period of your acquaintance there?
A. Yes, sir.
Q. Was irrigation a necessary thing there?
A. Yes, sir.
Q. That is to say the lands there required irrigation?
A. Yes, sir; they had orchards there that required water.
Q. Do you know whether this supply that they had there of

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one inch to eight acres was more than a necessary supply?
A. Not for an orange orchard it was not; it was not enough quite, I think; that is I think they could use more water to advantage; ofcourse they could get along with that and could get along with less.
Q. Do you know under what claim they used that water from that pipe line?
A. It was under a compromise right that they held from the Cucamonga Company.
MR. HASKELL, Q You have spoken of the Old Cucamonga Company, and also of the Fruit Land Company, Cucamonga Fruit Land Company?
. Yes, sir.
Q. The Cucamonga Fruit Land Company was the successor in interest of the old Cucamonga Company was it not?
A. Yes, sir.
MR. CHAPMAN: We move to strike out that answer on the ground that it is incompetent.
MR. HASKELL: We propose to offer the deeds subsequently.
THE COURT: Do you offer this for the purpose of deraigning title?
MR. HASKELL: No, sir.
MR. CHAPMAN: With that understanding you may go ahead.
MR. HASKELL, Q. Subsequently the Cucamonga Water Company was formed?
A. Yes, sir.
Q. And it took charge of the delivery of the water to the various parties who were entitled to water from the Cucamonga Springs?

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A. Yes, sir.
Q. And the Cucamonga Water Company was distinct and separate from the Cucamonga Company?
A. Yes, sir.
Q. Do you know a tract of land at Cucamonga owned by Patricio Marsicano, consisting of about 80 acres of land?
A. Yes, sir.
Q. When did you first become acquainted with that land?
A. I first became acquainted with the titles to the land in 1883; I became acquainted with the land in '84 - in '85.
Q. Where is that land located?
A. Section 10, Township 1 South, Range 7 west
Q. Where is it located with reference to Hellman Avenue?
A. Let's see; it is in 11 I think. No, it is in 10. Let me look at the map; I can tell you. I know where it is; it is on the south of the San Bernardino road, and west of Turner Avenue. It is in section 11.
Q. Could you tell us what part of section 11 it is?
A. It is the east half of the northwest quarter of section 11.
Q. Township 1 South, Range 7 west
A. Yes, sir.
Q. Have you ever had any business connection with that property?
A. Yes, sir.
Q. What?
A. I have had charge of it for Mr. Marsicano ever since 1886.
Q. Did you ever lease that property yourself?
A. Yes, sir; a number of years.
Q. What did you do with it as lessee?

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A. I planted barley in it.
Q. What else?
A. That is all I ever did with the land; the water I made other use of.
Q. What use did you make of the water?
A. I used it up in section 2 in potatoes.
Q. During what period of time were you the lessee, about?
A. I think I took it first in '88.
Q. And continued as lessee for how many years?
A. I think until 1897. I am speaking now simply from memory ; but I had it for from five to eight years; I don't remember exactly how long.
Q. Since that time have you had business relations with that property?
A. Yes, sir; I have acted as agent for Mr. Marsicano since 1897.
Q. What have you done with it?
A. I have leased it to various parties, principally to Mr. Stowell.
Q. Both the land and the water?
A. Yes, sir.
Q. Do you know whether or not any crops have been grown on that land?
A. Yes, sir; potatoes, and there is a garden there,- has been for a number of years. I think Mr. Keyes had it one year, and I don't think there was a garden there that year. I don't know, however; I withdraw that, because I don't know.
Q. What kind of a garden?
A. There was a Chinese garden there; I know I have seen

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that there.
Q. A vegetable garden?
A. Yes, sir.
Q. Was the water used on that place?
A. Yes, sir.
Q. How many inches of water belongs to that place?
A. Eight inches.
Q. From what source is the water obtained?
A. It is obtained from the Cucamonga Springs north of the vineyard.
Q. How is that water conveyed from the Springs to that Patricio Maraicano property?
A. It is conveyed in a 30 inch pipe line to the division box with the Cucamonga Vineyard Company; and from there in a 22 inch pipe line, to the division box with the settlers, on Hellman Avenue; and from there my recollection is, it is a 16; it may be a 22; I am pretty sure it is a ~~22~~ sixteen, to a reservoir, near the corner of the San Bernardino road, and Archibald Avenue, and from there in an eight inch iron pipe to his corner.
Q. When was that connection made, if you know, of a pipe line to the Maraicano property?
A. Either in the Fall of '86 or the Winter of '87.
Q. Who made that connection?
A. The Cucamonga Fruit Land Company.
Q. Under your supervision?
A. Yes, sir; I had immediate charge of it.
Q. How did that happen to be made?
A. According to the contract that the Cucamonga Fruit Land

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Company had made with Mr. Marsicano.
Q. Did Mr. Marsicano pay a consideration for that?
A. Yes, sir; not a monetary consideration; but a valuable consideration.
Q. What was it?
A. He quitclaimed all his right, title and interest in the east half of section 22, Township 1 South Range 7 West; that was the consideration. I sent him up a couple of hundred orange trees also.
Q. You were an officer were you not of the Cucamonga Water Company?
A. I was a director; I think I was president of it for a number of years.
Q. I will read to you now a clause from plaintiff's Exhibit 5 in this case which has just been offered by Mr. Waters: "With the same proportion of water from the springs belonging to the company, that his land bears to all the lands which can be reasonably irrigated for semitropical culture, with such water",- Have you seen that clause in numerous deeds
A. Yes, sir; in all the deeds; in all the original deeds, all that I know of.
Q. As an officer of the Cucamonga Water Company, did you know of a question being raised as to how much water should be delivered under that clause?
A. Not with the Water Company; with the Fruit Land Company it did, prior to the Water Company,- prior to th organization of the Water Company.
Q. Wherever that clause which I have just read occurred, how much water was in fact during your time delivered under

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that clause?
A. There were two different amounts; and inch to eight acres to some of the settlers, and an inch to ~~nig~~ ten acres to some of the others.
Q. Was there ever less than an inch to ten acres delivered under that clause, to any one holding a deed containing that clause?
A. No, sir; not to my knowledge.
Q. Is it necessary in order to grow crops profitably, to have water to irrigate this Varsicano property which you have referred to?
A. You can grow much more profitable crops with water, than you can without; you can grow barley on the land without, but it is much more profitable with the water.
THE COURT, Q. The water can be used beneficially?
A. Yes, sir.
MR. HASKELL, Q. Particularly during the summer months?
A. Yes, sir.
Q. Do you know the property owned by George D Haven?
A. Yes, sir.
Q. Do you know that he has a water right from the Cucamonga Springs? Do you know anything about his water right?
A. Why, he owned two tracts there; one tract in section 12, and the other tract in section 11; there were different rights to the two. I think he had only one inch to the land in section 12.
Q. He held an inch to ten acres in one tract did he not?
A. Yes, sir.
Q. How much in the other tract?

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A. I don't know; an inch or two inches of water.
Q. Wasn't there a certain amount of water sold to him whilst you were an officer of the company?
A. Yes, sir; there was.
Q. How much was that, if you remember?
A. I couldn't tell you.
Q. Well, that was sold to him to be delivered at a certain point on the pipe line was it not? Do you remember that?
A. Yes, sir.
Q. Was it so delivered to him, whatever amount the deed may call for, under pressure?
A. Yes, sir; there was water delivered to him on section 11, I know.
Q. Under pressure?
A. Yes, sir; under pressure pipe.
Q. And continuously during your time as an officer of the company, down to the time you left there in 1897 as I understand you?
A. As far as I know, there was.
Q. From the date of his deed, whatever the date of his deed might show?
A. Well, if not from the date of his deed, from some time approximately there; I don't remember now, but I know the water was delivered in accordance with the terms of the deed; whether delivered immediately or some little time afterwards I don't know; I know he planted an orchard out there, I think in '88, possibly in '87, and he couldn't have done it without water; and he did have water when he planted his orchard; I know that.

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Q. Was it nexessary and beneficial to his land to have water upon it?

A. Yes, sir.

Q. You remember the Musselman property do you not?

A. Yes, sir.

Q. How many acres? Do you remember?

A. Twenty acres, if my recollection is correct.

Q. Mr. Haven finally acquired that property did he not?

A. Yes, sir; he bought that.

Q. How much water was delivered to that place by your company?

A. My recollection is that the Musselman was one of the inch to ten acres properties.

Q. What was planted on that property?

A. A vineyard.

Q. Were there any orange trees there?

A. Yes, sir; there was some orange trees; I think it was mostly in vineyard however.

Q. Was that place planted when you went to Cucamonga in '85,?

A. Yes, sir; I think it was; I am sure it was.

Q. Was water delivered on that place from the Cucamonga Springs, during your time?

A. Well, when I first came there, it was one of the places there was a controversy on; they got water sometimes and sometimes they got a fight; but subsequently after the Cucamonga Fruit Land Company took charge they piped the water during the year,- either '86 or the Spring of '87,- to the Musselman place, and delivered the water to them from that time on.

Q. At the rate of one inch to ten acres?

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A. yes, sir.
Q. Under a four inch pressure?
A. Yes, sir.
Q. Whenever you refer to inches of water, you refer to a continuous stream under a four inchpressure?
A. Yes, sir.
MR. WATERS, Q. There is one question I omitted to ask Mr. Lynch. Do you remember whether those person who made that agreement that they would pay their proportion of the cost of that 22 inch pipe, did so or not?
A. Every one but one, from whom we purchased the land,- no - yes I think,- I am not sure whether Matthew Turner paid; I believe he paid subsequently; he did not for a good while. There was one or two that didn't pay at the time and we did not deliver the water; we never delivered the water to any of them till they paid. All of the eight inch people paid except George Hansler.
Q. You mean to say that all that got an inch to eight acres paid up?
A. Yes, sir; except George Hansler; and we bought his place from him.
Q. Those were the only people that had an interest in the 33.84 inches?
A. Yes, sir; there were some others that had some deeds, that we compromised with, on a basis of an inch to ten acres; they did not come in on the 33 inches.
Q. Those people that did represent the 33.84 inches, they did pay their pro rata of the cost of that pipe?
A. Yes, sir; they were paid up before we turned on the water.

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MR. HASKELL Q. Don't you remember that Matthew Turner and his associates paid their proportion to your company?
A. Yes, sir; subsequently they paid that; they got their water in that pxipe line, but they didn't get it from the 33 inches; we entered into another arrangement by which we agreed to pipe the water to their land.
Q. Do you remember the amount of cash Matthew Turner and his associates paid you?
A. We paid us ten dollars an acre; Matthew Turner had 60 acres; that would be $600.
Q. And the water was delivered regularly to him, through that pipe line from the Cucamonga Springs?
A. Yes, sir.
Q. Who is in possession of the Marsicano property now? this 80 acres?
A. It is leased to N. W. Stowell for this year.
Q. Have you seen the property this year?
A. Yes, sir.
Q. Is there anything on it?
A. Why yes there is a house and a garden there; I didn't pay much attention to it as I drove by; it was during the winter; I didn't notice whether it was cultivated much.
MR. BRITT, Q. I think in answer to a question put to you by Mr. Haskell you said that this Cucamonga Water Company took charge of the delivery of the water to the people entitled to it, from the Cucamonga Springs?
A. No, sir; I didn't understand that. The Cucamonga Water Company delivered the water to the people to whom they sold land, and also to some who held under the Cucamonga Company,

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under a contract of an inch to ten acres.
Q. Do you mean that the Cucamonga Water Company took control of the distribution of the water on the Cucamonga Vineyard?
A. No, sir; not at all; they never had anything to do with it, except controversies.
Q. And they didn't have anything to do with the distribution of water up there about the winery, or up there about the brick hotel?
A. We took our water at the division boxes, and we had no control of the water after the division was made.
Q. Did the Cucamonga Water Company have anything to do with the control or distribution of the one half of the water which Somers used , and the lands under his management?
A. No, sir.
MR. WATERS, Q. Did the Cucamonga Company have anything to do with the water of the old settlers?
A. No, sir.
Q. Originally they did?
A. Yes, sir; the Cucamonga Company brought it down in a flume.
Q. I am talking about after this pipe line system was made up, and the deeds were passed?
A. No, sir; we didn't want to have anything to do with them.
Q. They were fighters?
A. Yes, sir.
MR. HASKELL, Q. Do you mean the Cucamonga Company or the Cucamonga Water Company?
A. Well, neither one. About these 33 inches?
Q. Yes, sir?
A. After we delivered their water to them at that box, we

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had nothing more to do with them.
MR. CHAPMAN, Q. What box?
A. Division box at Hellman Avenue.
MR. WATERS, Q. Did you have anything to do with its flow down the 22 inch pipe, before it got to that place? As it would flow along through there?
A. No, sir.
MR. HASKELL, Q. I will ask you if Matthew Turner, George D Haven, or Patricio Marsicano, ever were connected with any of these corporations as stockholders?
MR. CHAPMAN: We object to that as not the best evidence.
THE COURT: Sustained.

Cross Examination.

MR. CHAPMAN, Q. In September 1885, when you were with Mr. Fitshugh, when he was making these measurements, how many different measurements did he make and at what points were they made?
A. Commencing at the northeast and then working down,- because I have to depend on my memory,- at the Lone Star Spring, which was above the Base Line, and very near Hellman Avenue, there was two and a fraction inches. Then at the Cienega where where the Y tunnel is, there was 16 and some inches; further down at what was known as the China Cienega, there was 51 and a fraction inches; and then up in the big weir, we were two days in measuring in the stream of the Cucamonga creek bed. There was a little stream below that, where water was taken under a deed, for the Southern Pacific Railroad; and we put in a small weir down along there somewhere, below the big weir, where I should judge there was 8 or 10 inches, and that

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was all incorporated in this 225 inches.
Q. That was all incorporated in the 225 inches?
A. Yes, sir.
Q. How much was the total amount measured at that time?
A. 295 on that side; 295.33 on the east side, and 111.74 on the west side.
Q. Whereabouts were the measurements made on the west side?
A. On the west side there was a flume running from the Cienega up on the bench, the extreme eastern portion of that water bearing land there from which water was flowing,- there was a flume which was used to carry it over to the Mexicans,- there was a tract of land 80 or 100 acres, used for raising corn and pumpkins, and they brought that water over in a flume; that gathered up most of that water up there; I didn't look that up, but my recollection is that there was about 60 inches in that stream; down below there was what was called Tiburcio Springs; there was 7 inches in that; that would make 67; then there was a stream came in below this flume; we measured that down somewhere near the mouth of the Eady tunnel, and there was probably about 20 inches there; and if my recollection serves me right we went up above, and there was another stream up somewhere where that well 14 is now; a small stream there of 8 or 10 inches; I can't give you those; I have not refreshed my memory; I testified to this in the MacPherson case, and at that time I was familiar with it. I don't know whether I testified to the particular measurements.
Q. I will call your attention to a part of your testimony in the MacPherson case, and see if that will refresh your

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recollection as to one of the measurements, where you were asked:

"Q. You say Mr. Fitzhugh's measurement was in '85?

"A. Yes, sir; in September, '85.

"Q. Do you know where he measured on the west side?

"A. Yes, sir.

"Q. Where?

"A. He measured at a point about 30 feet east of where the second well was driven-"

A. Yes, sir; that is where they took in the water in the flume.

~~Q. It was~~

Q. "It was about 125 yards, almost due north of the intersection of the cross-tunnel with the Eady tunnel."

A. Yes, sir.

Q. "It was at a point where the waters from the west side cienega were taken into the flume.

"Q. It was the lowest point on the west side cienega?

"A. Precisely.

"Q. How much does it show that that measurement was running at that time?"

"A. 45.27 inches. "

A. Well, I was mistaken in my present answer, because that was correct; it was fresh in my memory, and I had reference to the books that I had preserved at the time of the measurement.

Q. I will call your attention to a blue print, containing a tabulated statement of measurements, the top line of which refers to the Fitz Hugh measurements, and ask you if upon

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examination of that, it refreshes your memory, as to the measurements that were made by Mr. Fitzhugh?
A. Yes, sir.
Q. I will ask you whether that is a correct statement of the measurements made by Mr. Fitzhugh?
A. To the best of my knowledge it is, except in regard to the Tibarcio Spring; I think that is a mistake. I am very sure there was seven inches there, because I didn't think that was a fair measurement. I know there was more than an inch there.
Q. That is a mistake?
A. I think so; the others I think are correct.
THE COURT: I suggest for the sake of consecutive order, that we read that entire top line, and then let Mr. Lynch make the correction that he speaks of.
A. To the best of my knowledge and belief the Fitzhugh measurements were as follows: Creek division box 30 inch line, which I would designate,- there were none of those in existence then,- it was the creek bed of the Cucamonga creek on the east side,- was 225.26 inches. China Cienega, which was the most northerly,- a portion of the most northerly cienega on the east side, 51.73 inches. The Lone Star Spring, which was north of the Base line, and half a mile east of the others, 2.02 inches. The Y tunnel cienega,- this was prior to the construction of the tunnel, two streams, totalling 16.22. Total 295.35 inches. Total without Lone Star, 293.30 inches. Total water on the east side of the red hills, 295.35 inches.
On the West side - By tunnel No. 2 do you mean the Eady

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tunnel?
Q. Yes, sir.
A. Yes, sir; that is where I thought it was. That is where the big body of water came out before. Spring north of tunnel No. 2, 56.47 inches. West Cienega D, which was the northeast cienega on the west side 45.27 Picnic Springs Cienega, 9 inches. Tiburcio Spring,- here one inch; but my recollection is very positive, because I had a discussion with Mr. Fitzhugh at the time; they were irrigating there was some water came down there, and I didn't think it was a fair measurement; the ground was thoroughly saturated with water, and I think the measurement showed more than was really there.
Q. I see you testify in the MacPherson case on that point as follows: Your evidence is given thus:
"Then, at what was called the Tiburcio Spring, there was a little over 7 inches; but that wasn't fair, because the water was being run over on that side; that is, the water from the flume; they were irrigating up above the Tiburcio Spring, and the spring never has shown as much water as that, at any time since; and at some of our subsequent measurements there was much less."
A. When I testified in the Mc.Pherson case I testified from my own notes and data.
Q. And that was in 1900?
A. Yes, sir. I had not finished the other yet. Total on 90 acre tract 111.74 inches. Grand total Red Hills 406.07 inches.
Q. That was on the west side?
A. That is the grand total of everything.

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Q. I mean the 111?
A. 111.74 inches; that is the west side.
Q. Were the waters from the west side collected into any pipe or flume or aqueduct at that time?
A. The 45.27 inches were in a flume.
Q. To what place did that flume conduct the water?
A. It was distributed over the land below there. That was used for corn and pumpkins, and there was a walnut grove there also.
Q. Was this entire 111 inches of water, measured on the west side at that time ever collected together in one stream?
A. Not coming as it did from there; all that water was afterwards collected and put into the Eady reservoir with the exception of the Tiburcio Spring; it was never.
Q. Then where was the water connected to from the west side?
A. It was distributed over the lands of the Cucamonga Fruit Land Compa ny there.
Q. Were the waters that were found in this west side at any time that you were acquainted with that country conducted over and into this 22 inch pipe?
A. No, sir.
Q. It was entirely a separate syste ?
A. Yes, sir; it was entirely a separate system as far as the 22 inch pipe line was concerned; it was carried down south of where it rose, into a reservoir below the Santa Fe Railroad track, and put into the general system down there.
Q. Then this 33 inch Old Settlers' right, never was obtained from the waters of this west side?
A. No, sir; never.

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Q. From whence did that proceed?
A. They got their water from the springs north of the vineyard.
Q. The Cucamonga Springs?
A. Yes, sir; what were commonly known as the Cucamonga Springs.
Q. And those are on the east side?
A. On the East side of the Red Hill.
Q Now, the 225 inches were measured in the Creek, the Cucamonga creek, at that time, I believe?
A. Yes, sir.
Q. Did the waters of the Cucamonga Creek, fluctuate in quantity from year to year to a considerable extent in your time?
A. Yes, sir; the very next year there was 30 or 40 inches more, even later in the year.
Q. 1886 was a wet season was it not?
A. I couldn't tell you that now; I really don't know/ I don't think that it was particularly. I think the Winter of '85 was a wetter winter than '86. '84-'85 was a wet season. I don't think '86 was so wet.
Q. Was it '84-'85 or '83-'84 that was the wet season?
A. '84-'85, my recollection is.
THE COURT: '84-'85 was a very wet season; and '86 was quite wet.
A. Yes, sir; it was wet but not as much rain-fall as there was the year before.
Q. I will call your attention to your testimony given in the Mc.Pherson trial, after testifying to all these measurements, including the 7 inches, the question is asked;

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"Q. Is that all the water that was flowing on the west side that you measured?"

"A. That was all the water that was in large enough body to measure; there was some seepages. Along the edge of the cienega it was seeping through. There was a kind of a bench there about 20 feet in elevation, and clear at the north end of the cienega that seeped through, so that there was something of a stream there. And in Winter - this was done in September - early in the year the water would come through there in quite a quantity. Also up above there in the willows, there was some places where it is damp, and there was some water. Some seasons there is a great deal, and that season there was quite an account. It was immediately succeeding a very wet year."

A. Yes, sir.

Q. That was the fact?

A. Yes, sir.

Q. How low have you seen the water in that creek?

A. You refer to the creek on the east side?

Q. Yes, sir; the Cucamonga Creek?

MR. BRITT: At what season of the year?

MR. CHAPMAN: In the Summer season and in the Fall?

A. It is only a guess; I don't think I ever saw less than 140 inches there. I think that would be about the lowest.

Q. Well, I will call your attention to your testimony given in the MacPherson case, again, and ask you if you think that was correct:

A. I think that what I testified to there was correct, because those things were familiar to me, and I haven't thought

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of them since.
Q. The Court asked you this question:
"I would like to ask you, if during your knowledge of the east side, there was always a surface stream?
"A. I have never - I don't think I have been out there for a year or s- but there was always a stream there. I have seen as high as 240 or 250 inches in it, and I don't think I ever saw less than 80 or 90."
A. Well, I think that testimony was correct at the time, because I was familiar.
Q. And that was about correct was it? Those were about the extremes that you have seen there, in the ordinary irrigating season of the year?
A. Yes, sir.
Q. How far back was it when you observed the flow, when it was not more than 80 or 90 or 100 inches?
A. Well, that must have been, the lowest that I remember the stream, I think was in '96.
Q. 1896?
A. 1896.
Q. What wells were there in existence at that time?
A. The Tiburcio well was in existence then, and I think the Haskell well; but I understand it was deepened since; it was not a deep well but they pumped it at that time.
Q. In the fluctuations that have so taken place from your knowledge of that country, did you notice that it had any relation to the character of the preceding season, as to whether it was a season of abundant rain-fall, or but little?
A. We had a theory there that it took about a year to get down.

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Q. But it would get down?
A. Yes, sir; we expected a greater flow there, subsequently to a wet year than we did to a dry year.
Q. About a year subsequent to a wet season, you would feel the full effect of the wet season?
A. Yes, sir.
Q. Also after a dry season, it would be about the same time before you would feel its influence to any considerable extent?
A. Yes, sir.
THE COURT, Q You say you had a theory: Was it substantiated by the facts?
A. Yes, sir; it was a theory that grew out of the observation of the facts there, that you could notice the difference about a year subsequent.
Q. Was that a generally accepted theory in the community?
A. I think so; I have heard it discussed there.
MR. CHAPMAN, Q. When you first knew that country, about how near to the Base Line did these springs first make their appearance on the surface?
A. The nearest one was where we dug the Y tunnel; that I should say was the moist land - the water was probably a thousand feet below the b se line; but the moist land extended up 300 or 400 feet of that. My distances must be very indefinite now, because I have not visited that land for certainly eight or nine years.
Q. My recollection is that that is about what you gave it in the MacPherson case,- about one hundred yards?
A. Yes, sir. Well, that was where the moist land extended to,

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about 100 yards from there.
Q. How was it when you run that Y tuhnnel, after you ran that, where did the Springs then appear on the surface of the ground?
A. We dried up all that cienega there?
Q. Up above you?
A. Yes, sir.
Q. Did the water raise there again at any time, after the Y tunnel had been run, unless possibly in the spring, when the surface rains affected it? In the Summer time did they generally flow there?
A. Not above the tunnel, no, sir; that is my recollection.
Q. In '86 you begun the running of the Y tunnel?
A. Yes, sir.
Q. What was the object of it?
A. To develop that water there; we ran a tunnel in there, for the purpose of collecting a larger body in the flume, and to tap that water belt.
Q. To increase your water supply?
A. Yes, sir.
Q. At about the same time, or about a year later, you begun boring these wells, five in number?
A. Yes, sir.
Q. And you continued that until 1891, was it?
A. We dug these first two wells, with the intention of going down in the wash and digging another; at that time there was a great scarcity of well-boring implements here; and the South Riverside Company bought this from the man with whom we had a contract; it went on a year or so after that before we could get another, and we tried with a set of hand tools

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and put in three more wells which were all failures.
Q. What was the object of the expenditure in boring those wells
A. For the purpose of getting more water; we had about two or three thousand acres of land south of there that we wanted to get water on.
Q. And south of there, is that where these waters from the west side were carried?
A. Yes, sir.
Q. In part?
A. In part; yes, sir. We had all of section 22, that we never put water on, except one corner.
Q. Marsicano and Haven,- from what source did the water conducted to them proceed?
A. From the east side.
Q. And through this 22 inch pipe?
A. Yes, sir.
Q. The 16 inch pipe is the pipe of the Cucamonga Vineyard Company isn't it?
A. We have two lines across there, a 22 inch and a 16 inch. The 16 inch pipe line runs from the Y tunnel on a higher contour line than the 22.
Q. How does the Cucamonga Vineyard Company take its half of the water? By what conduit?
A. I really couldn't tell you; they put in a pipe connecting with the water boxes.
Q. At any rate their pipe line is separate and independent from yours?
A. Yes, sir.
Q. And takes one half of the water or is supposed to?

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A. Yes, sir.
Q. And the balance of it is conducted through the 22 inch pipe?
A. From the east side, the water is there all conducted through the 16 inch from the Y tunnel, or the 22 inch pipe line, or a small iron pipe line from the Lone Star Tunnel, or it was; I don't know what they have there now.
Q. Is that all conducted to the East?
A. Yes, sir; except the Vineyard Company water, which is taken south.
Q. I am speaking of the water controlled by the Cucamonga Water Company?
A. Yes, sir; that is all taken east.
Q. You were one of the organizers of the Cucamonga Fruit Land Company were you not?
A. Yes, sir.
Q. Was that the beginning of your interest in that section of the country, your personal interest?
A. No, sir; I went down there as the representative of the Cucamonga Company to adjust the water differences, and also some litigation in regard to land matters.
Q. When the Cucamonga Fruit Land Company was organized you were one of the stockholders?
A. Yes, sir.
Q. Were you a director also?
A. Yes, sir.
Q. The Cucamonga Water Company was organized some later?
A. Yes, sir.
Q. Was that organized also by you and your associates?
A. Yes, sir.

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Q. Were you a stockholder in that?
A. Yes, sir.
Q. And also a director?
A. Yes, sir.
Q. How long did you continue to be a stockholder in those two companies?
A. I am a stockholder in the Cucamonga Water Company until tomorrow, I guess. I am still, however.
Q. And in the Cucamonga Fruit Land Company?
A. Five years ago I think I disposed of all my holdings in that.
Q. You were a director in both companies, at the time of the deals with Stowell and with the Cucamonga Water Company?
A. Yes, sir. I am not sure that I was a director in the Water Company - I went out of the Water Company in 1897 - I think, and may be in 1896.
Q. Well, that was after the transaction in which the ninety acre tract was laid off?
A. Yes, sir. It was subsequent to that that I severed my connection.
Q. Do you know of any other work that was done in the immediate vicinity of the Cucamonga Springs, besides this Y tunnel, by way of trenching?
A. Yes, sir; we did a lot of trenching there.
Q. And the object of that was what?
A. To get water. To increase the water supply.
Q. About where were those trenches run?
A. We ran quite a number of trenches in the cienega; there was some water came in - there was water came in below the tunnel - below the Y tunnel,- and we ran trenches into that

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and dropped it into the 16 inch pipe line; and then we ran some trenches to the east, and some further southeast, and emptied it into the creek.

Q. Did they accomplish the purpose for which they were intended? Did they increase the water supply?

A. Temporarily they did but not permanently.

Q. About how long would the effect continue?

A. I suppose to a minor degree it would continue right along; but the flow was considerably greater when we first put in the trenches than it would be the subsequent year.

Q. Would it drain off the waters in the ground above the tunnel?

A. Yes, sir; it would apparently.

Q. or the trench?

A. Yes, sir.

Q. Then when that was accomplished, did you dig other trenches for the same purpose, or were you connecting,- were you cutting all of the trenches at once?

A. Oh no; that extended over a period of seven or eight years in all, I guess.

Q. As the waters flowing from one trench would subside, you would then cut another?

A. Well, we would open up those again; the sediment would deposit, and apparently raise the flow, and we would clean them out, and we did open others up.

Q. Have you been there recently?

A. Not over that ground; I have been to Cucamonga, but I have not been over that water bearing ground.

Q. You have not been where those trenches were put?

A. No, not for eight years; and then I simply traveled over

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there in a casual way, just looking over the work that was being done, and I didn't pay much attention; I paid more attention to driving the wells, and that work.

Q. Had you ceased to be a director of the Cucamonga Fruit Land Company at the time you were there last?

A. No, I think I was a director at that time, but my interest was not very great.

Q. At the time of the trail of the Mc.Pherson case, and previous to going upon the witness stand, did you make a tour of that country?

A. Yes, sir.

Q. You had already moved from this country?

A. Yes, sir. I went over it, since you call my attention to it, I went over it before the MacPherson trial with Mr. Stowell, and hunted up my old notes. I don't remember what year that was now. It shows how hard it is to fix dates.

Q. Well, all I know about that is the transcript of the reporter's notes says it was in 1900, and in February.

A. Well, that was seven years ago.

Q. The 13th day of the trial was the 23rd of February.

A. I was over there previous to my appearing as a witness in that case; yes, sir.

Q. Now, you spoke something of the manufact ring of wine,- by this Cucamonga Vineyard Company I suppose?

A. Yes, sir.

Q. Is it still manufacturing wine?

A. I think they manufacture all the wine down at the other winery; there is a new winery down at North Cucamonga, and both properties,- I think this vineyard is leased by the

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California Wine Association, who operate the winery down there.
Q. It is not operated by the Vineyard Company now?
A. No, sir.
Q. At the time of that trial, or rather when you went over the land, did you observe a difference in the cienegas, as to their extent, and the amount of water that was flowing from them, that had taken place, since you were there before? Could you see any difference?
A. I think they were considerably less. But that is simply an impression; I have not charged my mind with it at all. It is a long time ago, but that is the impression that I now have.
Q. Did you make any measurements when you were making your investigations, with a view to testifying in that trial?
A. No, sir.
Q. You did not measure the water anywhere?
A. No, sir.
Q. Nor was it done?
A. No, sir; I have no recollection of having done so; it might have been so but I don't remember it.

M Redirect Examination.

MR. HASKELL, Q. During the time that you testified that you had the Patricio Marsicano property leased, of whom did you hold the property as tenant?
A. When I leased it?
Q. Yes, sir.
A. I leased it from Mr. Marsicano.
Q. Subsequent to that time, all the time you have been his agent?

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A. Yes, sir; I have always attended to his taxes, since '84, and numerous matters; I did some business for him in San Francisco.

MR. BRITT, Q. As to the drying up of the cienega or those cienegas by the Y tunnel, it was the cienegas above the outlet to the Y tunnel that dried?

A. Yes, sir.

Q. Not those below?

A. No, sir; we dug trenches and collected that water, and deposited it in the box at the head of the 16 inch pipe line from the cienegas below.

Q. Is that 16 inch pipe line marked on the map, Plaintiff's Exhibit 2?

A. The upper pipe line.

Q. The sinuous pipe line extended from the Y tunnel to the left side of the map, indicates that pipe line does it?

A. Yes, sir.

Q. Was there anything else to the north of that Y tunnel dried upas a consequence of this operation, that you noticed?

A. Yes, sir; the Haskells had a well immediately north - almost due north of the center of the Y tunnel, and immediately north of the Base line; it was not a flowing well, but they used to have a pump on, and we dried that up, or at least lowered the water-level so that they had to abandon it.

Q. Will you indicate on this map, Plaintiffs'Exhibit 1, about the locality of that well on the Haskell place, which was affected in that manner: Indicate it with a circular pencil mark and put your initials on it. You have done as I requested, have you?

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A. Yes, sir.

Q. Do you know about what was the depth of the well on the Haskell land that you have just mentioned?

A. It would be only a guess now; it was a bored well.

Q. How was the water flowing from the Y tunnel, and those trenches which connected with from the Cienega, divided between the Cucamonga Vineyard people and your company?

A. There was a division box there.

Q. At what point?

A. It was almost immediately at the head of the 16 inch pipe line.

Q. Divided into equal shares?

A. Yes, sir. My recollection is that our pipe line connected with the box; I am very sure that it did.

Q. And they kept half of the water on the land including the Y tunnel?

A. Yes, sir.

Q. Do you know what use was made of it?

A. There was a garden there; they used to plant corn and alfalfa; there was an alfalfa field down immediately below that tunnel.

Q. To what distance was the other half of the water taken away by your company?

A. It was carried to a reservoir a little over half a mile east.

Q. And there distributed for what purposes?

A. There it was distributed for irrigation over the lands of the Colony.

Q. Did that same reservoir receive your part of the half of

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the water that came from the creek, and was taken out of the creek division box?

A. No, sir; it received no water except from the Y tunnel at that time; I don't know what it does now; I don't know what their system is now.

Q. To what distance was the water, your half of the water that was divided at the Creek division box, taken? I think you said in answer to a question a while ago by the Court it was taken east and south?

A. It was taken east and a little south, half a mile, to where the Old Settlers' water was taken out, and then from there it was taken half a mile further east, and a little south, to a reservoir, located near the corner of Archibald Avenue and the San Bernardino Road.

MR. WATERS, Q. This Y tunnel 16 inch pipe, did it connect with and carry water into the 22 inch pipe?

A. No, sir.

Q. Then did it connect into the sand box, just at the lower end of the 22 inch pipe, or the measuring box?

A. The 16 inch pipe line?

Q. Yes, sir; from the Y tunnel?

A. I don't think so; They may have put in a pipe line connecting the two pipe lines.

Q. May be that has been done since your time?

A. Well, I think it has; I am very sure it was not there before.

MR. CHAPMAN, Q. Do you remember whether there was any trenching done at these China Springs so-called?

A. I think we ran one trench in there; there wasn't very

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much there - Oh, yes; we ran quite an extensive trench running southwest.

Q. Do you remember about when that was done?

A. No, sir; I couldn't tell you; it was I think in the latter years of my stay there.

MR. HASKELL, Q. During your time in Cucamonga, where was the water from the west side used?

A. It was conveyed - a portion of it was used right below the red hill. What was called the Eady reservoir was located immediately south of the red Hill. Then it was conveyed down to the intersection - to the northwest corner of 6 and 22 I think - Anyway, it was immediately below the Santa Fe Railroad; we had another reservoir there, and then we had another line running along the Santa Fe Railroad East, and a reservoir on Archibald Avenue, may be a little over an eighth of a mile south of the Santa Fe Railroad. We had three reservoirs south of the red Hill that this water was conveyed to.

Q. It was used for irrigation of oranges there was it not?

A. Yes, sir.

Q. On property that had been sold?

A. Yes, sir.

Q. Under that system, and watered under that system?

A. Yes, sir.

Q. And the waters from the west side, did connect with the waters from the east side system, at some point did it not?

A. It connected at a reservoir on Archibald Avenue, a little over an eighth of a mile south of the Santa Fe Railroad.

Q. And from that point the waters of the two systems

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intermingled?
A. Yes, sir.
Q. And were used interchangeably to supply the necessities of the settlers?
A. They were emptied in a common reservoir.

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F. E. TRASK.

F. E. TRASK a witness recalled by plaintiffs, being further examined, testified as follows:

Direct Examination.

THE WITNESS: Relative to measurements of weirs on the 90 acre tract, you requested such measurements as I had, and I have from my note books found measurements, made on three different dates in the year 1904.
MR. BRITT, Q. Very well, let us have them?
A. April 15th, 4A weir, 207.4 inches. Weir No. 4, 80 inches. Cucamonga Well No. 3, 7.2 inches.

October 3th, weir 4A, 133.12 inches. Weir No. 4, 53 inches. Cucamonga well No. 3, 4.51.

November 19th, 4A weir, 119.84 inches; No. 4 weir, 46.42 inches. Cucamonga well, No. 3, 3.90 inches.

I will say that the weir designations are the same as used by Mr. Reed, and given in plaintiffs' testimony, and that 4A represents the water in the Cucamonga tunnel, coming from the lands owned by the Ontario Power Company, and includes the waters of the San Antonio Water Company, and the Ontario Power Company together, above the 90 acre tract and west of it; and that weir No. 4 represents the waters coming into the tunnel from the 90 acre tract, from two wells distant

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some 100 feet or more east of the measuring box; and that Cucamonga well No. 3, was a well having a small flow of water, some two or three hundred feet southeast from this measuring box, which included both weirs 4A and 4.

Q. Where are those weirs with reference to the present bulkhead in that tunnel?

A. They are above it.

Q. This map now displayed on the board is one referred to by Mr. Locke in his testimony yesterday, is it, and is kept by the San Antonio Water Company showing its lines of main, their location and extent, and used by it in the distribution of ~~xxx~~ water in the Ontario Colony?

A. Yes, sir.

Q. Was that map prepared by yourself or under your direction?

A. That map was made by myself years ago, and there may be some additions and changes and so forth that have been made by others, subsequently to the original map.

Q. It was made by you at the request of the San Antonio Water Company, was it?

A. Yes, sir; it seems to be dated 1895, and my recollection is that this map was prepared at that time, and at that time correctly showed all of the pipe lines in the gathering and distributing systems of the San Antonio Water Company, and within the colony lines.

Q. It is drawn to a correct scale is it?

A. Yes, sir.

Q. What is the scale of the map?

A. 600 feet to the inch.

Q. That is the scale to which it is drawn?

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A. Yes, sir.
Q. Does that show the situation of the pipe lines through which the San Antonio Water Company receives and conducts away to the place of distribution the water derived from the so-called 16th Street wells?
A. Yes, sir; from time to time, after the date 1895, the year in which the original map was drawn, as new pipe lines were constructed, I platted upon the map a record of their location, and that continued up until I severed my connection with the company, in October I think, 1900.
Q. How long were you out of the Company's employ?
A. Well, I changed my headquarters from Ontario to Los Angeles, in 1900, and there was a period from October, 1900, for about two years, that I have no recollection of having performed any services for this company.
Q. Then in 1902 sometime you resumed your connection as chief engineer of the company?
A. No, sir; I have never since then been chief engineer of the company; simply consulting engineer.
Q. And that relation you have occupied ever since?
A. Simply from time to time as occasion required my services.
THE COURT, Q. Your employment has not been by way of general retainer, but only employed for special work?
A. For special work, as the occasion would arise.
MR. BRITT, Q. Does this map show the line of pipe, by which the company takes away the water which it receives from well No. 14, indicated on Plaintiffs' Exhibit 1, or well No. 9, as it is designated by Mr. Locke?
A. I have not seen this map for some years: some one has

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pencilled here approximately, the location of the tunnel leading up to the well you have designated.

Q. Also what appears to be a line of pipe, leading from the mouth of the tunnel in a westerly direction: Do you know what that represents?

A. There are two lines practically parallel there, and that represents two pipe lines.

Q. I am asking you these questions because of Mr. Teeke's absence, and I suppose he is more accurately informed about those lines of pipe than yourself.

A. Some of them, possibly.

The first line was constructed by Mr. Stowell, a cement 22 inch pipe line, and leads from the measuring box near the mouth of the Eady tunnel, westerly, to the east lines of Ontario Colony Lands, and near the northeast corner of lot 548, in said Colony Lands, and at that point is located a box, which has been referred to in the testimony in this case as the Stowell box, and that is the point at which Mr. Stowell delivered the water, in the early years of the use of the water by the San Antonio Water Company; and from that point westerly, bearing somewhat south, there are still two lines nearly parallel, to a point near the northwest corner of lot 569 of the Ontario Colony Lands.

Q. What is the size of those square lots into which the map is mainly divided? They indicate subdivisions of the Ontario Colony Lands do they?

A. Yes, sir; they represent ten acres each.

Q. It would be then an eighth of a mile?

A. Well, correctly, 694 feet east and west, and 627 feet

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north and south.

I will say the diameters of those pipes, from the Stowell measuring box west, one of them is a 24 inch pipe, and the other is a combination of 16 and 18 inch pipe.

Q. Does this map show where the lines of any railway cross the Ontario Colony Lands?

A. Yes, sir.

Q. What railroads?

A. The Santa Fe Railway, and the Southern Pacific.

Q. The Santa Fe being the further north?

A. Yes, sir; and half-way between 8th and 9th Street.

Q. What is it, that is halfway between 8th and 9th street?

A. The Santa Fe.

Q. And the Southern Pacific is located where?

A. Located near the southern part of the map, and near the north line of section 29 and 30, Township 1 south, Range 7 west; both lines running approximately east and west through the Colony.

Q. Are you able to say from this map where the corporate limits of the Town of Upland are situated?

A. No, sir; I am not familiar with the limits of that Town.

Q. In regard to pipes of the San Antonio Water Company, leading from the north, are they delineated on this map? Those coming from San Antonio Canyon, from the Frankish and Stamm Tunnel, and the Gird water, and other sources of supply which were mentioned by Mr. Weeks in his testimony?

A. The general system of distribution is one of north and south laterals.

Q. I was not speaking about distributing system, but about the

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means through which the San Antonio Water Company receives its supply for distribution?
A. Well, I am familiar with them; yes, sir.
Q. Do they appear on this map?
A. Yes, sir.
Q. Where are they shown?
A. The upper left hand corner of this map, and in section 13, Township 1 north, Range 8 west, and near the line of the letter "S" in the word "Sec. 13", is located the division dam at the intersection of a ditch with the creek channel of the San Antonio Canyon.
Q. Does that indicate a point in the mouth or near the mouth of the San Antonio Canyon, at the foot of the mountains, or close to the foot of the mountains?
A. Well, it is known as the mouth of the canyon; as a matter of fact it is up in the canyon for three quarters of a mile, probably,- half or three quarters.
Q. Does the map show also the Gird water, the source of supply called by Mr. Locke the Gird water?
A. No, sir.
Q. It does not?
A. The Gird water is taken out at the divide or division dam so-called.
Q. Where is the Rodenhamer tunnel situated?
A. The Rodenhamer tunnel is situated about the center of the map, and about the center of section 36, Township 1 north, Range 8 west, running north and south through said section.
Q. Does the San Antonio Water Company maintain upon the

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tract of land covered by this map, or represented by the map, the reservoir for the reception of water from the 16th Street wells?

A. No, sir.

Q. Does it maintain such a reservoir for the reception of water drawn from the mouth of the Eady tunnel?

A. No, sir.

Q. It has no reservoir then at all?

A. None whatever, connected with the system.

Q. It has some measuring boxes of greater or less dimensions, where the water is segregated from the supply lines into the distribution boxes? Is that its scheme of operation?

A. Yes, sir; measuring and division boxes are located on the main supply pipe lines, as well as on the distributing lines, usually on the corner of each ten acre tract, throughout the Colony.

Q. Can you tell by refer nce to this map what is the distance from the Haskell well, or wells Nos. 7 and 8, as you have described it, in the series of wells north of the Base Line, 16th Street Wells, to the first distribution pipe in use by the San Antonio Water Company?

A. Yes, sir; approximately; I can measure it.

Q. All right: let us have that distance, please.

A. It is a little less than two miles; the first pipe line intersected by the 20 inch main, conducting the waters from the wells you have described, is located on the west side of Lot 450 of the Ontario Colony Lands.

Q. And the total distance is a little less than two miles?

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A. Yes, sir.
Q. About how much less?
A. I make the distance by scaling the map 10,200 feet.
Q. Is the water drawn from the 16th Street wells so-called, conducted through the same main 20 inch pipe which you mention?
A. Yes, sir; each well is connected with the main line of which I have spoken by a short north and south line, joining the well with that main.
Q. Now, I observe that there is what is called the 15th Street pipe marked on the map: that has been cut out you say.
A. There was a ten inch steel pipe at the point you designate, or along the line you designate, which for a time carried the waters from well No. 3, and was of small capacity, and was abandoned after a large main had been laid of sufficient capacity to conduct all of the waters from all the wells bored above 16th Street.
Q. Now, I assume that this map now before us on the board represents territory, which, in general, has a slope from north to south, or from a northerly to a southerly direction: Is that true, speaking generally?
A. That is, in general terms, correct.
Q. Now, you have answered that taking the water from the Haskell well, through the line of pipe which I think you called the 16~~th~~ inch pipe line, it was about two miles to the nearest distributing pipe?
A. Let me add right here, that there was a short section of pipe laid, paralleling the first pipe from the Haskell wells through to the Colony Lands. It was found that the

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original pipe had not sufficient capacity, and from a point about south of well No. 5, to a point in the westerly side of lot 419 of the Colony Lands a supplemental pipe line was laid; I think they are both, however, sixteen inch,- the original and the supplemental line.

Q. This pipe is connected with or was connected with the distributing pipe of the San Antonio Water Company, at a distance of a trifle less than two miles from the Haskell well: from that point of connection is the water discharged, and has the water been discharged into the distributing system of the San Antonio Water Company, generally, or was there merely a small portion taken from that first distributing pipe, and the remainder taken on further westward?

A. From the point where it first intersected the first north and south distributing line, the main conduit was continued in a southwesterly direction.

Q. How far?

A. Something over six thousand feet, crossing diagonally the Colony Lands, and intersecting at each ten acre line north and south pipe lines, and the practice has been, in the distribution of water, to turn out and deliver to each north and south lateral such an amount as the zanjero found necessary in the handling of the water.

Q. Was this amount anything like an equal amount at each north and south distributing pipe or main?

A. I have no personal knowledge of his method, though my judgment is he took out such an amount as was necessary at that point, and that it was not a regular amount; it might vary from day to day and from week to week.

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Q. What is the greatest distance reached through this system of pipes which were thus connected with the main leading from the 16th Street wells, extending southerly and westerly from the point of connection? The first point of connection was in Block - -

A. Between lots 451 and 452, and near the north line.

Q. Now, the next question is the greatest point reached through that system extended southerly and westerly?

A. Well, many laterals intersected going a length of some four miles south from the point of intersection.

Q. Are they so connected up, and have they been so connected up, that they distribute the water west as well as south, towards the western boundaries of the Colony Lands? What I mean to say, after the water is turned from this main from the 16th Street wells, into the pipes which lead from north to south, did it remain in those north and south pipes, or was the system so constructed that it was taken west as well as south,- whether there were lines connected with those series of north and south lines in such a manner as to conduct the water toward the west?

A. The system is so devised that below the point of the main diagonal which brings the water -

Q. That means pipe line?

A. Yes, sir. - - - which brings the water from the Haskell and 16th Street wells, that the waters can be shifted at some points east or west. For instance, if water is being used on any lateral, to the capacity of that lateral for the first two miles, and it is found necessary at some point south of the point where the capacity of the line has been

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in use, to deliver water, diagonals have been placed in the system, so that the water can be shifted over west or east.

Q. Do you know whether the water is so shifted, and has been for a number of years, when occasion required?

A. Yes, sir; that has been the custom whenever the necessity arises,- the necessary lines have been constructed in the system for that purpose.

Q. Has the water been so shifted at all whenever it was taken from the 16th Street wells?

A. I cannot give any specific instances, but I know the practice of the men in control has been to shift the water, so as to get the greatest economy in its use, and give the greatest convenience to the stockholders of the company; and it has been all distributed and used on the lands of the Colony and its stockholders.

Q. You mean the stockholders of the San Antonio Water Company?

A. San Antonio Water Company.

Q. Now, as to the pipe which leads from the mouth of the Eady tunnel: how far is that water taken away from the mouth of the Eady tunnel before it reaches the distributing mains of the San Antonio Water Company? Scale that in the same way that you did the pipe leading from the Haskell wells?

A. Well, I will state that a certain percentage of that water has been applied to the lands lying east of the Colony Lands, and south of the pipe line, and used on those lands; I don't know how much, but I know there has been a use made on the lands lying south of the County road.

Q. That is what is called the San Bernardino County road,

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on these maps, Plaintiffs' Exhibits 1 and 2?
A. yes, sir; and used on lands lying east of Colony lots 549 and 574.
Q. Do you know what percentage of the water has been used in that manner?
A. I have no knowledge, except the fact that I have seen the water used there, and I know it is used. The diagonal from the mouth of the tunnel has a length of about 15,000 feet.
Q. Is that the distance before it intersects one of those north and south mains? or lines for the distribution of water within the Ontario Colony?
A. No, sir; that is the distance to and through the Colony.
Q. And the first connection made within the distributing system of the San Antonio Water Company, is how far from the mouth of the Eady Tunnel?
A. About 7200 feet; and the point where it intersects the north and south line is near the northwest corner of lot 569.
Q. As marked on this map?
A. Yes, sir.
Q. Now, what is the relation between those two pipes,- the relation on the ground between those two pipes which lead from the mouth of the Eady tunnel in a westerly direction, and into the territory supplied by the San Antonio Water Company? Do they lie close together? You know that Mr. Leeke spoke in his testimony about a measuring box to which those two pipes run, about half a mile westerly from the mouth of the Eady tunnel.
A. Well, he was correct in that. Those two lines are parallel and very close together; they are indicated as two parallel

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lines on the map.

Q. Do they emerge at that point, so that the water westerly from that measuring box is conducted through one or two pipes?

A. The two pipes continue from the mouth of the tunnel to the Stowell box, where they both empty in a box, and from that point there are two pipe lines parallel through to the point where they intersect the first north and south pipe line.

Q. Then what becomes of them?

A. From that point westerly and south a single line has been laid.

Q. It is that point about 7200 feet distant from the mouth of the Eady tunnel where the twin pipes cease?

A. Yes, sir; that is the terminus of the two pipe lines.

Q. Are they the same size to that point?

A. No, sir; I gave them to you a few minutes ago; one of them is a 24 inch, and the other is a composite line, 16 in part and 18 in part; and the diameters I have just given apply to that part of the line west of the Stowell box; between the Stowell box and the Eady tunnel one line is a 22 inchand the other is a 30 inch, and bith are marked here on this map as cement pipes.

Q. Is the water from the Eady tunnel, taken through those two pipes which you mention shifted through the lines of the distributing system of the San Antonio Water Company in like manner as the water which comes from the 16th Street wells?

A. Yes, sir.

Q. At, however, a lower elevation I suppose? A. Yes, sir; the same method is pursued but a lower point in the Colony.

Here the Court takes a recess until May 2[illegible],1907,10A.M.

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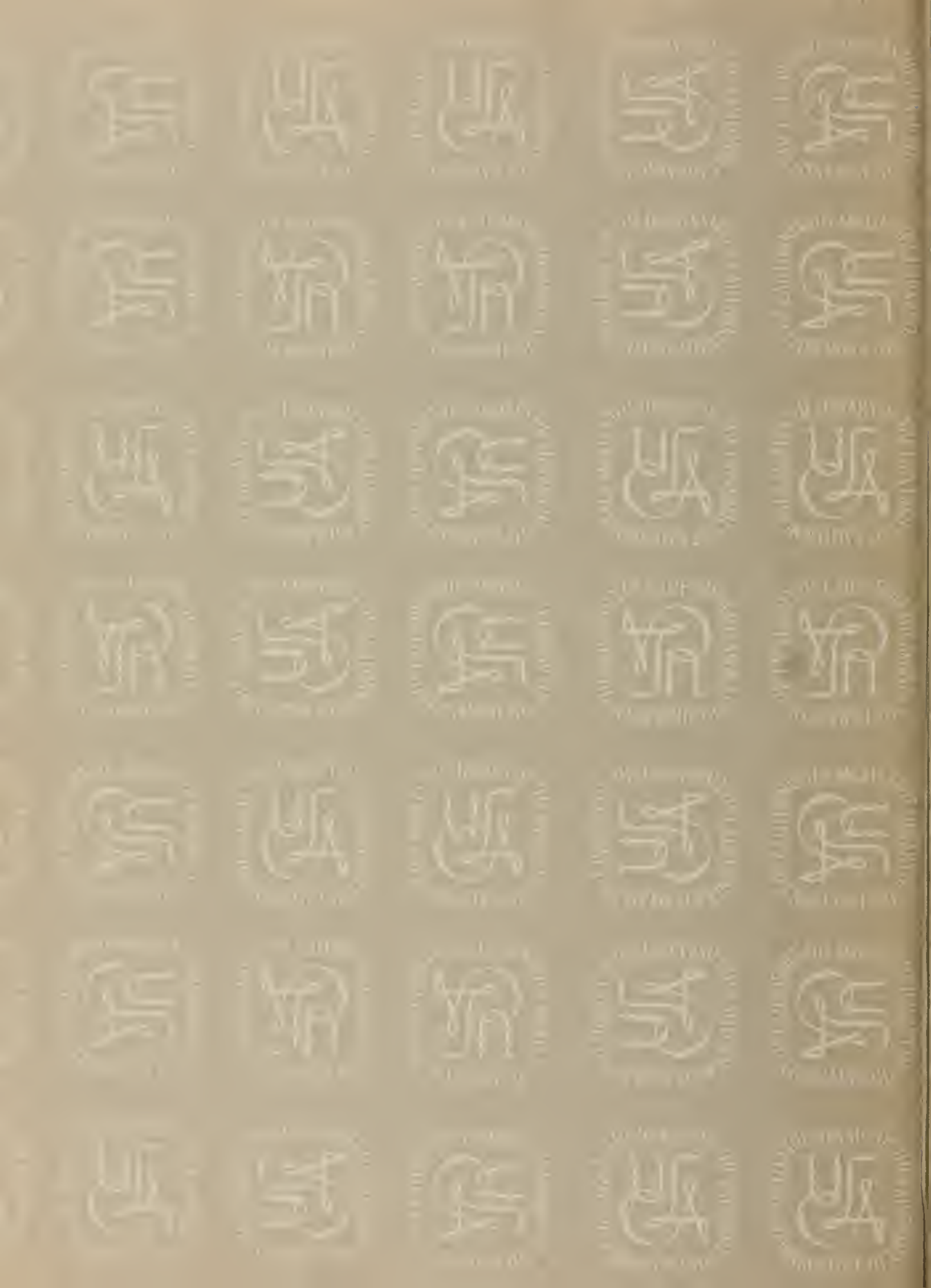

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